

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S FINAL APPROVED TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona
September 28, 2006
9:30 a.m.

Reported By:

Angela Furniss Miller, RPR
Certified Reporter (AZ 50127)

Page 2

1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
2 ELECTIONS COMMISSION, convened at 9:30 a.m. on September
3 28, 2006, at the State of Arizona, Clean Elections
4 Commission, 1616 W. Adams, Conference Room, Phoenix,
5 Arizona, in the presence of the following Board members:

6 Ms. Marcia Busching, Phoenix, Chairperson
7 Mr. Gary Scaramazzo, Page
8 Ms. Ermila Jolley, Yuma
9 Mr. Carl Kunasek, Maricopa
10 Ms. Royann J. Parker, Pima,

11 OTHERS PRESENT:

12 Todd Lang, Executive Director
13 Diana Varela, Assistant Attorney General
14 Colleen McGee, Deputy Director
15 Paula Ortiz, Executive Assistant
16 Michael Becker, Voter Education Manager
17 Christina Murphy, Fiscal Services Manager
18 Daniel Ruiz II, Campaign Finance Manager
19 Eric Peterson, Administrative Counsel
20 Andy Gordon, Attorney for Janet Napolitano
21 Christian Palmer, Arizona Capitol Times
22 David Maddox, Attorney for Munsil Campaign
23 Mike Bailey, Len Munsil for Governor
24 Lee Munsil, Len Munsil for Governor
25 Sahana Jayaraman, Off Madison Avenue
Lauren Lowe, Perkins Coie Brown & Bain
Chuck Blanchard, Perkins Coie Brown & Bain
Rhonda Barnes, Perkins Coie Brown & Bain
Jan Van Amerongen, Citizen
Paul Davenport, Associated Press
Nancy Read, Office of the Secretary of State
Eric Ehst, Clean Elections Institute
Sheenae Shannon, Citizen
Cindy, Napolitano Campaign
Barbara Klein, League of Women Voters
David Burnell Smith, Citizen
Linda Bentley, Sonoran News

Page 3

1 P R O C E E D I N G

2
3 CHAIRPERSON BUSCHING: Good morning. I'm
4 Marcia Busching. I'm the Chairman of the Citizens Clean
5 Elections Commission. This is the meeting of the
6 Citizens Clean Elections Commission.

7 It's Thursday, September 28th, 2006 at 9:30
8 a.m. We're located at 1616 West Adams, Suite 110,
9 Phoenix, Arizona 85007.

10 On any matter, the Commission may vote to go
11 into executive session which will not be open to the
12 public for any item listed on the agenda for obtaining
13 legal advice.

14 All matters on the agenda may be discussed,
15 considered, and are subject to action by the Commission.

16 The first item is the call to order, which I've
17 already done.

18 Second item is the approval of the August 30th,
19 2006 and September 7th, 2006 Commission meeting minutes.
20 Are there additions or corrections?

21 I noted a couple of additions on both sets of
22 minutes that I've given to the court reporter. If
23 anybody wants me to point them out, I'll be happy to do
24 so. They're on page 23 of August 30th in line 14,
25 should be "ID" as in identification rather than "idea".

Page 4

1 And on page 29, line 25, needs to be a dash in the
2 statutory site. Those are the only corrections that I
3 had on that one.

4 On the September 7th minutes, on page 11, line
5 8, instead of "repetition" it should be "remember". And
6 on page 63, instead of "butt" it should be "bud". And
7 on page 89, line 23, instead of "spent" it should be
8 "sent". Just a few things.

9 COMMISSIONER SCARAMAZZO: I'd move to approve
10 the August 30th and September 7th Commission meeting
11 minutes with the changes.

12 CHAIRPERSON BUSCHING: Is there a second?

13 COMMISSIONER KUNASEK: I'll second.

14 COMMISSIONER JOLLEY: I'll --

15 CHAIRPERSON BUSCHING: It's been moved by
16 Commissioner Scaramazzo and seconded by Commissioner
17 Kunasek that the minutes of August 30th and September
18 7th be approved as amended. All in favor say, "aye."

19 (Chorus of ayes.)

20 CHAIRPERSON BUSCHING: Opposed, nay?

21 Chair votes aye. Motion carries.

22 Item III, Executive Director's report.

23 MR. LANG: Thank you, Madame Chair. Good
24 morning, Commissioners.

25 You have my ED Report there but I'll mention a

Page 5

1 few things. PBS Frontline is coming into town on
2 October 4th, which also happens to be the day of the
3 governor's televised debate, to film on site both at the
4 capital here and elsewhere. They're featuring two
5 participating candidates Representative Quelland and Mr.
6 [sic] Thrasher. And they may, you know, they'll be
7 doing a lot on Clean Elections and so I look forward to
8 that.

9 As you see, 60 percent of the remaining
10 candidates are participating. So even after the
11 primary, we still have a large majority of candidates
12 who are participating candidates.

13 Nothing new to add to voter education, other
14 than what you already see there.

15 In terms of enforcement, you'll note that on
16 Jason Williams there is a probable cause brief level
17 which I've written. But we have since entered into a
18 proposed settlement that we'll have on the agenda for
19 the next meeting for your approval.

20 And then also in the Murphy matter, you see the
21 date there. It was scheduled for this coming Tuesday --
22 or Monday actually but it's been postponed at Mr.
23 Murphy's request. So we will let you know when that
24 next date is.

25 The next meeting of the Commission will be

Page 6

1 October 12th and we'll have several enforcement matters
 2 for you at that time.
 3 That concludes my report.
 4 CHAIRPERSON BUSCHING: Thank you. Are there
 5 questions of Mr. Lang?
 6 Mr. Lang, did -- did Mr. Murphy have a reason
 7 for his desiring the postponement?
 8 MR. LANG: Actually, Madame Chair, I think
 9 Diana Varela the Assistant AG can better address that.
 10 MS. VARELA: He had some unexpected family
 11 issues come up -- which he didn't go into and I didn't
 12 ask him to -- and some other primary election-related
 13 issues that came up, so he called a couple days ago
 14 requesting an extension. He had granted me one this
 15 summer, so I thought I would pay him the courtesy.
 16 CHAIRPERSON BUSCHING: Okay. All right. Other
 17 questions of Mr. Lang?
 18 If not, we'll move into Item IV, discussion and
 19 possible action on the following enforcement matters:
 20 A) MUR 06-0014, Jason Williams, probable cause
 21 recommendation.
 22 Mr. Lang?
 23 MR. LANG: Madame Chair, Commissioners, you
 24 have before you a probable cause recommendation but I
 25 ask that you table your consideration of that as we have

Page 7

1 reached a settlement in that case.
 2 Also, the other matters in Item IV also should
 3 be tabled as well. Mr. Nelson, we're planning to
 4 discuss settlement with him. And Ms. Lovallo, although
 5 she asked for a settlement conference and we're going to
 6 set that up for her, the letter that I sent to her, the
 7 timing of it requires we give her approximately three
 8 more days to respond. So I'd ask that you not consider
 9 that one as well because she still has those three days.
 10 CHAIRPERSON BUSCHING: Okay.
 11 MR. LANG: Given that in all three cases
 12 settlement is a possibility, I'd ask that these matters
 13 be tabled.
 14 CHAIRPERSON BUSCHING: All right. Well, let me
 15 go ahead and call Items B) and C) and then see if
 16 there's anyone from the public that wishes to speak to
 17 those matters today and then we can move forward.
 18 So, I will call: Item IV B), MUR 06-0006,
 19 Larry Nelson, probable cause recommendation; Item IV C),
 20 MUR 06-0015, Lisa Lovallo, probable cause
 21 recommendation. Is there anyone from the public that
 22 wishes to speak to any of these matters?
 23 Okay. If not --
 24 COMMISSIONER SCARAMAZZO: I move Items MUR
 25 06-0014, 06-0006, 06-0015 be tabled.

Page 8

1 COMMISSIONER JOLLEY: I'll second that.
 2 CHAIRPERSON BUSCHING: It's been moved by
 3 Commissioner Scaramazzo and seconded by Commissioner
 4 Jolley that we table Agenda Items IV A), B), and C),
 5 Jason Williams, Larry Nelson, and Lisa Lovallo, probable
 6 cause recommendations.
 7 Any further discussion?
 8 If not, the Chair will call for the question,
 9 all in favor say, "aye."
 10 (Chorus of ayes.)
 11 CHAIRPERSON BUSCHING: Opposed, nay?
 12 Chair votes aye. Motion carries.
 13 Item V, discussion and possible action
 14 designating Commission Representatives for purposes of
 15 informal settlement conferences for Jason Williams and
 16 Lisa Lovallo.
 17 Mr. Lang?
 18 MR. LANG: Madame Chair, I'd ask that -- my
 19 recommendation is that we need not designate someone for
 20 the Jason Williams matter since we've reached a proposed
 21 settlement. Of course, that still is an option.
 22 And then I would ask that someone from the
 23 Commission be designated to negotiate with Ms. Lovallo.
 24 I note that she lives, I believe, in the Tucson area for
 25 whatever that's worth.

Page 9

1 COMMISSIONER PARKER: Me.
 2 MS. VARELA: Commissioner Parker.
 3 COMMISSIONER SCARAMAZZO: All eyes upon you,
 4 huh?
 5 COMMISSIONER PARKER: I'll be happy to.
 6 CHAIRPERSON BUSCHING: Okay. That was going to
 7 be my next question.
 8 MR. LANG: Thank you, Commissioner.
 9 CHAIRPERSON BUSCHING: As has been the
 10 tradition of the Commission in the past to ask the
 11 Commissioner that's most closely located near the person
 12 that is seeking a settlement conference, Ms. Parker has
 13 agreed that she will be the designated settlement
 14 representative for the Lisa Lovallo matter.
 15 So, with that, may I have a motion?
 16 COMMISSIONER KUNASEK: I would move that Royann
 17 Parker -- Commissioner Royann Parker be designated as
 18 the Commission Representative for the informal
 19 settlement conference for Lisa Lovallo.
 20 COMMISSIONER SCARAMAZZO: Second.
 21 CHAIRPERSON BUSCHING: It's been moved by
 22 Commissioner Kunasek and seconded by Commissioner
 23 Scaramazzo that Commissioner Parker be designated the
 24 informal settlement conference representative for the
 25 Lisa Lovallo matter. All in favor say, "aye."

Page 10

1 (Chorus of ayes.)
 2 CHAIRPERSON BUSCHING: Opposed, nay?
 3 Chair votes aye. Motion carries.
 4 Mr. Lang, before I go on, let me ask you, did I
 5 hear you say that Mr. Nelson has also asked for a
 6 settlement conference?
 7 MR. LANG: Madame Chair, actually that person
 8 was designated at the last meeting.
 9 CHAIRPERSON BUSCHING: And that's between Mr.
 10 Kunasek and I, depending on our availability.
 11 MR. LANG: Right. And he's provided Daniel
 12 Ruiz with several dates regarding his ability in
 13 October. So, hopefully, one of them will work for one
 14 of you.
 15 CHAIRPERSON BUSCHING: Okay. Okay. Great.
 16 Moving to Item VI, consideration and
 17 decision whether there is reason to believe a violation
 18 occurred in MUR 06-0018, complaint against Janet
 19 Napolitano, request for investigation.
 20 Mr. Lang?
 21 MR. LANG: Thank you, Madame Chair,
 22 Commissioners. This is certainly an interesting case
 23 and what you have before you is a rather lengthy
 24 complaint by the Munsil Campaign. I congratulate them
 25 on their detailed detective work. But, in short, what

Page 11

1 they present is a situation where a -- the group -- two
 2 independent expenditure groups Arizona Values Coalition
 3 and Arizona Conservative Trust engaged in expressed
 4 advocacy against Len Munsil both in the primary and in
 5 the general.
 6 They are concerned -- the Munsil folks are
 7 concerned because those groups have some ties to the
 8 Democratic Party and to protect Arizona's -- Project for
 9 Arizona's Future, the nonpartisan corporation issue
 10 advocacy group. Based on the allegations regarding the
 11 employment of one Mr. Beau Memory and some other folks,
 12 the concern was raised that there was coordination
 13 between the Napolitano Campaign and these activist
 14 groups.
 15 In the meantime, Commission staff has awarded
 16 matching funds to the Munsil Campaign for several
 17 thousand dollars for several communications. We have
 18 been able -- although the initial finance reports by the
 19 independent expenditure groups have been not entirely in
 20 order, they have endeavored to correct those. And
 21 regardless, throughout this matter, Mr. Memory has been
 22 cooperative with staff and given all the information
 23 they have requested.
 24 In fact, apparently he faxed some of the
 25 information requested from the office of -- I get all

Page 12

1 the anagrams mixed up, Protect Arizona's Future --
 2 Project for Arizona's Future. And that raised some
 3 concerns with the Munsil Campaign and, frankly, with
 4 staff.
 5 But we received a response both from the
 6 Napolitano Campaign by her attorney, Andy Gordon, and
 7 the response from what we call "The Committees", which
 8 are the three: The two independent expenditure
 9 committees, and the nonpartisan nonprofit cooperation
 10 Project for Arizona's Future. Those were written as one
 11 combined response that you should have before you by
 12 Chuck Blanchard.
 13 And in those you see how they laid out the
 14 situation. It was an interesting series of
 15 coincidences. In particular the one that stuck me was
 16 the good detective work by the Munsil Campaign to find
 17 the newspaper report in North Carolina that indicated
 18 Mr. Memory was going to work for the Napolitano
 19 Campaign, which, of course, raised red flags for both
 20 the Munsil Campaign and for staff.
 21 But based on the affidavits I received -- we
 22 have affidavits from several folks, including: Noah
 23 Kroloff, the campaign manager for the Napolitano
 24 Campaign; both Beau Memory and Seamus Perry of the
 25 Arizona Values Coalition; Debra Dennis of the Arizona

Page 13

1 Conservative Trust; and Thomas Ziemba of the Project for
 2 Arizona's Future. And in the past we've used
 3 affidavits, as you know, because they are sworn
 4 statements that are subject to criminal sanctions.
 5 And these affidavits completely disavowal any
 6 connection between the Napolitano Campaign and the
 7 independent expenditure committees. And they refute
 8 many of the allegations, including the allegations that
 9 Mr. Memory ever was associated with the Napolitano
 10 Campaign. In fact, he swears he was not and Mr. Kroloff
 11 says the same.
 12 Staff -- Eric Peterson our administrative
 13 counsel called the newspaper in question, and the
 14 newspaper indicated they were pretty unsure of what the
 15 source was because it's just a gossip column and they
 16 print it pretty much, almost like a bulletin board. But
 17 they thought it might have been a family member that
 18 called, perhaps Mr. Memory's mother. Mr. Memory's own
 19 affidavit indicates it was the grandmother, I believe.
 20 Regardless, the sworn statements indicate that
 21 the allegations are not true. And if I'm to believe
 22 these sworn statements, then -- although there are some
 23 allegations by the Munsil Campaign that implicated other
 24 state laws, in particular Article One reporting
 25 requirements between those three committees, they don't

Page 14

1 implicate Clean Elections' matters because Clean
2 Elections is only implicated if there's coordination
3 between the Napolitano Campaign and the committees.

4 So, regardless of the funding mechanism and
5 concerns about the reporting, Clean Elections comes into
6 play only if there's coordination, because in that case
7 these would be illegal contributions to the Napolitano
8 Campaign and would raise very serious sanctions.

9 So given the sworn affidavits and given what
10 we, you know, have done in the past, in particular in
11 the Munsil case involving the volunteer work of campaign
12 workers in which the Commission accepted affidavits in
13 that case, I recommend that we not do an investigation
14 into this matter. And if the Commission has questions,
15 I'm sure happy to answer them.

16 Let's also make sure you have all the
17 documents. You have my recommendation and then you have
18 the letter from Doug Drury dated September 26th, which
19 he calls a Supplement to Request For Investigation. He
20 also kindly included copies of letters that he sent to
21 the State Election Director Joe Kanefield on September
22 22nd and a letter expressing his concern to the County
23 Attorney Andy Thomas.

24 You should also have his letter dated September
25 19th, which is the original complaint with all its

Page 15

1 attachments. And they're rather lengthy. And then you
2 should have the response from Andy Gordon on behalf of
3 the Napolitano Campaign, and it also includes -- and its
4 attached to the Noah Kroloff affidavit. And you should
5 have the joint response on behalf of PAF, AVC, and ACT
6 by Chuck Blanchard along with those. And it's a fairly
7 lengthy response, 16 pages.

8 And then there are several affidavits as well
9 of the folks that I list in my report. And that -- that
10 should conclude what you have.

11 Also, I should mention that Beau Memory swears
12 and Thomas Ziemba swears to the accuracy of the
13 Blanchard letter. So, in addition to their affidavits,
14 they also swear to the accuracy of his letter. And I
15 believe that's everything.

16 Oh, we have some attachments that indicate what
17 Project for Arizona's Future is all about, several
18 Website printouts that I think are designed or are
19 intended by Mr. Blanchard to demonstrate the sort of
20 nonpartisan nature of their communication.

21 I believe that's everything. So, unless you
22 have questions, that concludes my report.

23 CHAIRPERSON BUSCHING: Thank you. Are there
24 questions of Mr. Lang?

25 Okay. As it has been our practice in the past,

Page 16

1 we'll take comments from the public. I will limit the
2 comments to 10 minutes and if there's rebuttal later on,
3 those comments will be limited to five minutes.

4 So, with that, if there are no questions for
5 Mr. Lang, I will open it up for anyone that wishes to
6 speak to this matter.

7 Sir, if you would come forward and speak into
8 the microphone and state your name, please.

9 MR. MADDOX: Madame Chairman, I'm David Maddox
10 with the Len Munsil Campaign. Once again, as I always
11 do, I've had the pleasure or I think it's the pleasure
12 of being here on several occasions and thank you for
13 your service.

14 And I want to express to you the fact that I
15 think we all share a common frustration with this law
16 and the fact that there are great limits on you and it
17 limits what you can do and it limits also what we can
18 bring before you. So we're totally aware of that and
19 understand that.

20 We do agree with the Director's statement that
21 the complaint sets forth allegations that if true may
22 constitute violations of other state laws, but he
23 concludes those do not implicate the act and other
24 agencies to investigate, he's also stated that. We
25 agree with that and we disagree with that.

Page 17

1 We certainly agree with that, that there are
2 other agencies that are going to have to investigate.
3 But we don't agree you can't do something and you
4 shouldn't do something. And I would like to kind of
5 have a discussion with you and lay out four questions
6 that I would ask you to just kind of think about. As I
7 looked at this, these kind of jumped at me.

8 The first one is, are you guys really powerless
9 to do anything about this because of the way the law is
10 written? That was kind the conclusion that Todd made.
11 And we talked about this.

12 Is the recommendation before you consistent
13 with prior activities of the Commission? Now, he raised
14 that point and I have raised it too. I think it's very
15 important that you look at what you've done before to
16 make sure that you are consistent so campaigns --
17 Republican, Democratic, doesn't matter -- have to play
18 by the same rules.

19 The third one I'd ask is, does the pass on this
20 complaint advance the agenda of the Clean Elections in
21 Arizona because it is discretionary?

22 And the fourth one, which I think may be the
23 most important one of all, why must the Commission act?
24 Why you and not the Secretary of State or the Attorney
25 General or Mr. Thomas or anybody else?

Page 18

1 If you look at the Commission on the law, I
 2 think it's pretty clear, I think, of what's been written
 3 and you have in front of you, that the law does not
 4 prohibit you from acting. He makes the statement --
 5 Todd does -- that the alleged violation depends not on
 6 coordination of the various entities and their
 7 principal, but on coordination between such persons and
 8 the Respondent's campaign. Well, clearly that's the law
 9 and we're not asking you to go outside the law. That's
 10 absolutely true as to any kind of sanctions but not
 11 necessarily true as to funding.

12 And there's two parts to this request and I'm
 13 just going to focus on whether or not you should
 14 investigate. There is a conclusion that he brings in
 15 his recommendation where he says, "The evidence
 16 presented by the complaint and obtained through
 17 inquiries made by the Commission staff do not establish
 18 coordination between the Respondent and the various
 19 entities responsible for the anti-Munsil advocacy."
 20 That's on page three.

21 I would just say to you that that is perhaps a
 22 true statement, but it is not the right standard. There
 23 is no -- no way at this point that either the Commission
 24 or us can, quote, "establish coordination." I mean, we
 25 can't present you evidence that says it's over. We do

Page 19

1 not have the power of subpoena. We don't have -- you
 2 know, we can't go -- if we had phone records, and bank
 3 records, and e-mails, and communications between these
 4 entities and the campaign, we'd know.

5 But we can't get them. We have no vehicle for
 6 doing that and you haven't done that. And I'm not being
 7 critical, it's not at that stage. But there's no way we
 8 can establish guilt or innocence at this point. And
 9 that's not standard. What we're trying to see is, are
 10 you presented with enough facts where you should go look
 11 and see what the truth is? And I'm confident that you
 12 if make that decision the Governor's campaign will
 13 cooperate and get to the bottom of this fairly quickly.

14 You know, our conclusion is that you do have
 15 the right to proceed and now I want to look at why you
 16 should proceed. And start out right where he did and to
 17 I think very correctly, consistency. I was the lawyer
 18 involved in that one where the Commission three to two
 19 decided to overlook the recommendation -- or overrule, I
 20 guess, the recommendation and not do an investigation.
 21 If you remember what I presented you and I asked you if
 22 you have any doubts about this, and you have time to go
 23 back and look because you need to compare, it's apples
 24 and oranges. You know, I wrote the letter, so I know
 25 exactly what was in the letter.

Page 20

1 I wrote you a letter which I verified. And
 2 what I verified in the letter was the nature of my
 3 investigation. Here are -- you know, here is the
 4 complaint, here are the people I went and talked to, and
 5 here is what they told me. Now, I swore in my letter
 6 that's what I did so that you had before you the nature
 7 of my investigation, so that you were -- you could judge
 8 whether or not it was a complete investigation.

9 I then went back to every single person
 10 mentioned in the complaint and made them do an
 11 independent affidavit which stated that the facts that I
 12 stated about them, which I got from them, were true.
 13 And that included the candidate, that included the
 14 consultants, and that included the campaign treasurer,
 15 everybody who had any involvement whatsoever at all.

16 So you had before you a complete package under
 17 oath, so that you under the penalties of perjury could
 18 do something if somebody wasn't telling you the truth.
 19 You had what kind of investigation, what was the result
 20 of the investigation, what every single person that was
 21 involved had to say all under oath.

22 You don't have that here. I advise you to take
 23 a very close look. Here's what you got: You got two
 24 attorneys' letters, which don't tell you the nature of
 25 the investigation that were undertook and not verified

Page 21

1 by the attorneys; you have those two verifications that
 2 he mentioned in Mr. Blanchard's letter, but if you look
 3 at them they're not swearing the facts in truth.
 4 They're saying that the instrument.

5 I hope one of the things you guys do at some
 6 point is establish a rule of what kind of verification
 7 has to be, so it's clear that the verification is to the
 8 truth of what the facts state, rather than just I verify
 9 it's an instrument or I verify the instrument. I don't
 10 know what that means. And in a criminal sense, I don't
 11 think I could ever convict anybody on that.

12 If you look at the affidavit that came in from
 13 the campaign director for the Governor's campaign, what
 14 you find is in several material instances it comes down
 15 and says, quote -- and here's the words right out of the
 16 affidavit -- "To the best of my understanding." What
 17 does that mean? It certainly doesn't mean: I'm telling
 18 you this is the facts and these are true.

19 And you're not going to ever get a perjury
 20 conviction out of that. So, in effect, it's not -- you
 21 know, portions of that are not an affidavit.

22 And the other thing is he makes statement about
 23 the Governor and lots of other people, but it doesn't
 24 say who he talked to to come to the conclusions. I
 25 mean, the fact he may have not been in a room when the

Page 22

1 conversation occurred so he doesn't know about it,
 2 doesn't mean it didn't occur.
 3 What you don't have before you is anything from
 4 the Governor under oath saying I had nothing to do with
 5 this.
 6 You know, that to me, in and of itself, is
 7 enough to say you need to do something. Because it was
 8 very clear to us that we had to come to you with
 9 affidavits and we did it in a second -- in the second --
 10 you know, we did two submittals including our candidate.
 11 I'll recognize that our candidate isn't governor yet --
 12 and I'll underline the word "yet" -- but when he is
 13 governor, you know what, he's going to swear, because
 14 he's not above swearing to whatever the truth is if it
 15 involves him. And she shouldn't be either. And you
 16 could require that at minimum.
 17 Does the pass advance Clean Elections? There's
 18 a lot in this that is troubling. Again, we haven't
 19 taken anybody's deposition and we can't. We haven't
 20 gotten bank records or phone records. All we can do is
 21 tell you what they looks like. But on September the
 22 18th, a Democratic spokesman said they had no
 23 involvement in these groups and then they had to quickly
 24 eat a little bit of crow and come back and say: Oh, by
 25 the way, I just realized they gave them one hundred

Page 23

1 thousand dollars.
 2 Now, they don't mention that in their
 3 affidavits, they mention a "major donor" or something
 4 like that. Well, the major donor was the Democratic
 5 Party and the head of the Democratic Party in Arizona
 6 last time I looked is the governor.
 7 You've got financial statements that were filed
 8 by several of these groups that are just not correct.
 9 Now, I'm not saying they're false and fraudulent. How
 10 do I know? We've got this lease that came out of
 11 nowhere, which is a nine-day lease, but it's not on the
 12 financial statements. You know, the contribution is not
 13 on the financial statements. There's just a lot that's
 14 going on here that does not make sense.
 15 I've got two minutes. I need to hurry.
 16 Okay. So here you go, what are you going to
 17 do? You've got the problems with the affidavits and the
 18 other things.
 19 Let me just jump to the last one, why is it
 20 important that you act? It's important that you act
 21 because you are the only people that can investigate
 22 these things that are not political. I mean, when the
 23 public out there looks at it, yes, there's something
 24 filed with the Attorney General, well he's a Democrat.
 25 There something filed with Mr. Thomas, well he's a

Page 24

1 Republican. Something filed with the Secretary of
 2 State, she's a Republican. But you guys were supposed
 3 to be the group -- and I admit the law is not good, but
 4 you guys were supposed to do Clean Elections, and you
 5 are nonpartisan.
 6 So, I urge you to investigate this thing and
 7 clear it up once and for all. If there's something
 8 wrong, you can act. If there's nothing wrong, then
 9 fine, there's nothing wrong. But the record before you
 10 is not the same as what we put before you, and it
 11 doesn't, I think, give you the right to just walk away
 12 from it without looking at it. And you can do that
 13 fairly quickly and be over one way or the other.
 14 Thank you.
 15 CHAIRPERSON BUSCHING: Thank you. Are there
 16 questions of Mr. Maddox?
 17 COMMISSIONER KUNASEK: Madame Chairman, I do.
 18 After I read through these various affidavits and so
 19 forth, I don't disagree with you as far as the need for
 20 a complete and full investigation. The issue in my mind
 21 comes down to: Number one, does this agency have the
 22 tools to do that; and, number two, do we have the time
 23 to do that?
 24 I mean, these elections come along, they're set
 25 in stone. And to do some of these investigations is

Page 25

1 going to take a significant amount of time. To get
 2 records, you know, phone records, any kind of records is
 3 going to take time.
 4 Does this agency have that kind of time?
 5 MR. MADDOX: Well, I think that the agency was
 6 charged with doing that. I mean, specifically, I can --
 7 if I took a minute, I could you show you the rules and
 8 all that, what the powers are that you do have.
 9 And I think what will happen here is that
 10 you're going to get a lot of cooperation so it goes
 11 away. I think the Governor's office will show up here
 12 with whatever you need. Phone records are in a file,
 13 it's not you have to go subpoena the telephone company.
 14 I would think that they would move forward as quickly as
 15 possible in good faith just to get this thing wrapped.
 16 And if it turns out to be nothing, it's nothing and they
 17 can establish that fairly quickly.
 18 If you want depositions, I bet he can set a day
 19 and Todd can take all the depositions you needed to take
 20 in one day. All these entities are connected in same
 21 way, shape, or form to the Democrat Party. I think you
 22 can do it and you can do it in a hurry.
 23 It's in everybody's interest to get this
 24 resolved and resolved quickly. And if there's no
 25 problem here, it shouldn't be hard to come to that

Page 26

1 conclusion quick.

2 I don't know about your resources but I would
3 assume I have not misstated what you can do. Okay.

4 COMMISSIONER KUNASEK: Well, I share your
5 feeling on the issue that unless we do something, how
6 are we enhancing the stature of the Clean Elections
7 Commission, whether it be this case or any other case.
8 I think there's probably enough question out there as to
9 the good or the effectiveness that we've had so far. I
10 don't know.

11 MR. MADDOX: Thank you.

12 CHAIRPERSON BUSCHING: Mr. Maddox -- is there
13 any other questions of Mr. Maddox?

14 I have a question, Mr. Maddox.

15 MR. MADDOX: Oh, yes, ma'am.

16 CHAIRPERSON BUSCHING: As you mentioned in your
17 talk, I voted against the motion to -- in the prior
18 case, and -- because I thought there should be an
19 investigation. I realize that affidavits are a strong
20 form of information, but affidavits don't necessarily
21 say everything. And we did set somewhat of a precedence
22 there I think. And since this is a case that involves a
23 candidate for the same office, I'm loathe to investigate
24 here under the circumstances where we didn't investigate
25 there.

Page 28

1 such a problem unless we were talking about two
2 candidates for the same office. So --

3 MR. MADDOX: We would be more than happy to do
4 that. In fact, we have been filed another complaint.
5 If you want us to bring live witnesses down here rather
6 than file affidavits in this next one -- the Democratic
7 Party has filed another one -- we'll do that. We don't
8 have anything to hide. If we've done something, we're
9 going to come tell you when the complaint is filed and
10 deal with it. I think that the Governor's staff will
11 feel the same way. And I think that's a good idea.
12 We'll be glad to do that.

13 CHAIRPERSON BUSCHING: Okay. Thank you. Are
14 there other questions of Mr. Maddox? If not, thank you.

15 Is there anyone else that wishes to
16 speak?

17 Sir, if you will come forward and state your
18 name. And as indicated, 10 minutes, please.

19 MR. GORDON: Andy Gordon on behalf of the
20 Napolitano Campaign. I want to thank the Commission for
21 allowing me to appear today.

22 With all due respect to the Munsil Campaign,
23 the last thing they want is for this to come to a quick
24 and clean closure. This is a campaign season and they
25 want to keep this alive as a campaign issue.

Page 27

1 And this may just be a hypothetical question,
2 but would you have any problem in reopening that
3 investigation if the Commission were to move forward and
4 investigate in this situation?

5 MR. MADDOX: I have not spoken to the
6 candidate, but I can tell you that my intention was at
7 that meeting that if you had voted in accordance with
8 Todd's regulation, we will fully cooperate and set it up
9 and get it done. If you guys think that you need to
10 talk to Shawn and the rest of them, fine. We don't have
11 anything to hide. We'll cooperate. If you think that's
12 either fair or required, we'll be glad to do it,
13 absolutely.

14 Now, if I get fired, don't worry. I'm not
15 getting paid, it won't hurt me.

16 And I think the Committee would feel the
17 absolute same way that we do. You know, you guys need
18 to be an effective instrument and you can't be an
19 effective instrument if you don't stand up. And if you
20 want us -- if guys vote and say, fine, you want to
21 reopen that one and talk to us, fine, we'll do it. Set
22 up a day and we'll get everybody down here, put them
23 under oath, and we'll bring you any documents you want
24 to see and we'll do it. Be glad to.

25 CHAIRPERSON BUSCHING: Yeah, I wouldn't have

Page 29

1 To the extent this Commission allows
2 investigations to proceed forward, they -- this
3 Commission ends up being a tool for the candidates in
4 campaign season. I know this because I sat here for a
5 couple of months in an investigation that went on and
6 on.

7 The fact is, twice before -- I believe it was
8 actually twice before -- the Munsil Campaign has avoided
9 investigation based on the affidavits in cases where
10 there was much more evidence out there then there is
11 here.

12 What is the so-called evidence that gives basis
13 for this complaint? It's a snippet from a gossip column
14 in North Carolina that no one can attribute. That is
15 the only shred of evidence to say that there was any
16 coordination between the Napolitano Campaign and the
17 activities of the IEs. There is a lot of other things
18 out there about the IEs and the relationship between the
19 IEs and the -- and the nonpartisan group and their
20 reporting.

21 But the question here is, did they coordinate
22 with our campaign.

23 The sole evidence is this gossip column. And
24 if you can keep an investigation going based on that, in
25 light of how easy it is to get things put in gossip

Page 30

1 columns and blogs and everything else out there,
2 Commissioner Kunasek is right, that's all you will do.

3 It is fundamentally unfair when we've come back
4 with the affidavit from the -- from the Campaign Chair
5 who's supposed to know what's going on, to say we had
6 nothing to do with this.

7 It's straightforward. It's easy. There is no
8 coordination. And in light of what the Commission has
9 done in the past, it is just fundamentally wrong to keep
10 this going.

11 I don't think that took 10 minutes and I'm glad
12 to answer any questions that any of the Commissioners
13 may have.

14 CHAIRPERSON BUSCHING: Are there questions of
15 Mr. Gordon? Thank you.

16 Sir?

17 MR. BLANCHARD: I'm Charles Blanchard, the
18 attorney for the campaign committees and the Project for
19 Arizona's Future.

20 Just a few points that I think will be
21 important to make. One is, we're not talking about some
22 groups out there that have not registered with the
23 Secretary of State. Both independent campaign
24 committees have registered and they both have
25 obligations to make filings.

Page 31

1 In the case of the Arizona -- the Arizona
2 Values Coalition, that filing is to be due next week
3 which will fully disclose their funding sources which
4 have already been disclosed by the party.

5 If these were organizations attempting some
6 grand conspiracy, I would be surprised if they are
7 registered committees, but they are both registered
8 committees. And as Mr. Lang pointed out, they've been
9 very cooperative with the Commission staff.

10 In fact, one example is on primary day they
11 made an independent expenditure. There was some
12 questions the staff had. The staff called. They called
13 Beau Memory, and Beau Memory immediately faxed
14 information they needed even though if he was not
15 legally obligated for 24 hours. He could have stopped
16 matching funds for the Munsil Campaign, but he
17 cooperated immediately and that allowed a check to be
18 cut.

19 Again, what is the evidence here of
20 coordination? The only evidence again is this gossip
21 column in a newspaper saying Beau Memory was going to
22 show up and work for the Napolitano Campaign. We have
23 his affidavit that says that he never worked on the
24 Napolitano Campaign, never was offered a job, but went
25 to the Project for Arizona's Future. And he went there

Page 32

1 because he knew his future boss, Tom Ziemba, because
2 they worked together.

3 We have affidavits from Mr. Ziemba, we have
4 affidavits from everyone involved, and the affidavits in
5 the Napolitano Campaign.

6 And I'll remind you, there's been two, not one
7 but two Munsil complaints resolved by the affidavits.
8 One was an allocation to get coordinated, I guess it was
9 some newspaper or some catalogue --

10 MR. LANG: A gun catalogue.

11 MR. BLANCHARD: -- and the allegation was an
12 independent coordinated expenditure. And there Mr. Lang
13 had affidavits and based on the affidavits he had from
14 both, he recommended no action be taken.

15 And the second example is the one that's more
16 recent. And that was the allegations about there was
17 gamesmanship going on with the salaries.

18 Here we have not just given you conclusory
19 denials, we've given you a detailed chronology of what
20 happened. We've denied not just the general issues, but
21 denied the specific.

22 And the penalties for perjury are far more
23 serious -- far more serious than if they had just fessed
24 up and said, gee, we're guilty.

25 So I think in light of how this Commission has

Page 33

1 dealt with not one but two Munsil complaints, and in
2 light of the fact that the only evidence of coordination
3 before you is this gossip column which hardly gives --
4 which has not even been embraced by the paper itself, I
5 submit there's not sufficient evidence of coordination
6 to even proceed with an investigation.

7 I'm happy to talk about the other parts.
8 You'll note our letter didn't just deal with issues
9 under this Commission's jurisdiction. I'm happy to deal
10 with the other issues and I dealt with them in the
11 letter.

12 But at this point, in terms of the issue before
13 you, I don't think there's sufficient grounds to go
14 forward especially in light of how you've dealt with
15 affidavits in the past.

16 CHAIRPERSON BUSCHING: Thank you. Are there
17 questions of Mr. Blanchard?

18 Mr. Kunasek?

19 COMMISSIONER KUNASEK: Mr. Blanchard, old
20 colleague here. It's good to see you again.

21 MR. BLANCHARD: You too.

22 COMMISSIONER KUNASEK: I appreciate the
23 comments that both you and Mr. Gordon made with regard
24 to coordination and the difficulty that this Commission
25 or anybody would have to establish a direct coordination

Page 34

1 in the effort before us. However, when I see the
2 statement of the reply here that the Respondent makes,
3 the Respondent acknowledges engaging in fundraising
4 efforts on behalf of PAF.

5 We both have been through a number of campaigns
6 and there's a lot of things that can be said in one
7 setting that carry over to another, yet there is no
8 direct linkage. I think what this does is point out the
9 difficulty at trying to enforce this kind of a program.

10 And so I -- I just, you know, I know there's
11 probably not much we can do because there's no direct
12 link in either of the cases that we've had, the previous
13 one or this one. But I'm not that naive either. And so
14 there is my, I guess, my view.

15 Not a question, just a comment to an old
16 colleague.

17 MR. BLANCHARD: If I could with the
18 Commissioners -- Chairman and Commissioners -- respond.
19 Just to understand, the Project for Arizona's Future is
20 not a campaign committee. They've worked very hard to
21 not talk about candidates. If fact, they have bent over
22 backwards in ways that other organizations that are also
23 nonprofits have not. And gone so far as to praise
24 Russell Pearce and to praise both the speaker wires and
25 President Bennett for doing their -- for following their

Page 35

1 position on issues.

2 And the fundraising that the Governor was
3 talking about occurred way, way back. So the project is
4 not -- even though there's all the connections, they
5 support the governor's agenda, you know, I'm sure I can
6 make the same allegations about the Center for Arizona
7 Politics supporting the Len Munsil agenda, but that's
8 not the standard.

9 And -- and the folks here know the rules and
10 they know the consequences of coordination are just so
11 severe that -- and especially since they're registered
12 committees that have to file. I think as time goes on
13 you will see that the Len Munsil Campaign and some other
14 legislative candidates may not like what happens, but it
15 will be fully disclosed.

16 CHAIRPERSON BUSCHING: Commissioner Parker?

17 COMMISSIONER PARKER: Are the filings by these
18 independent expenditure groups, are they all current?

19 MR. BLANCHARD: I believe they are. Mr. [sic]
20 Chairman and Ms. Parker, let me -- the filings that are
21 being required so far have been trigger reports, which
22 are the \$500 and \$1,000. And there were, you know,
23 problems that we're now working on, but they did provide
24 enough information for the staff to make matching funds.
25 And they were all done by the -- the Arizona

Page 36

1 Conservative Trust.

2 The Arizona Values Coalition has not yet made
3 expenditures, they just made a transfer to another
4 committee; and, therefore, they have not had to file a
5 trigger report. But they will have to file a
6 post-primary report which I believe is due next week.
7 And I know they're working on it.

8 And I believe the Arizona Values Coalition may
9 have actually prematurely filed its post-primary report
10 as well.

11 COMMISSIONER PARKER: Why would they have not
12 had to file the transfer? Was it a transfer of an
13 actual expenditure?

14 MR. BLANCHARD: If you look at the software,
15 it's not an expenditure, it's a transfer to another
16 committee. And so you go through the software and
17 transfer to committee, that's not used as an
18 expenditure.

19 COMMISSIONER PARKER: What committee did they
20 transfer one to?

21 MR. BLANCHARD: The Arizona Value -- Arizona
22 Conservative Trust, ACT.

23 COMMISSIONER PARKER: PAF transferred to --

24 MR. BLANCHARD: No, not PAF. PAF has not made
25 any -- any political expenditures.

Page 37

1 COMMISSIONER PARKER: Okay.

2 MR. BLANCHARD: I'm talking about Arizona
3 Values Coalition.

4 COMMISSIONER PARKER: Okay. So they
5 transferred to who?

6 MR. BLANCHARD: ACT, Arizona Conservative
7 Trust.

8 And, again, that will be reflected in the
9 campaign reports of AVC when they file next week.

10 CHAIRPERSON BUSCHING: Are there other
11 questions of Mr. Blanchard?

12 If not, thank you.

13 MR. BLANCHARD: Thank you.

14 CHAIRPERSON BUSCHING: Is there anyone else
15 that wishes to speak?

16 Sir?

17 MR. BAILEY: Good morning. My name is Michael
18 Bailey and I'm here on behalf of Len Munsil.

19 COMMISSIONER SCARAMAZZO: Good morning.

20 CHAIRPERSON BUSCHING: Okay.

21 MR. BAILEY: Madame Chairman and Commissioners,
22 I would like to address an issue that's very important
23 to us, but seems to have fallen through the cracks in
24 everything that we've talked about so far today. And
25 that is the issue of matching funds and whether we have

Page 38

1 gotten enough for matching funds and whether we know
 2 what we should have for matching funds.
 3 CHAIRPERSON BUSCHING: Mr. Bailey, that's not
 4 the agenda item, and so, unfortunately, we can't talk
 5 about matching funds in this context, I believe. But if
 6 I'm wrong on that, I'll seek counsel from my Executive
 7 Director and Counsel.
 8 So, why don't you wait a second on that and let
 9 me find out from people and then if you have other
 10 things to talk about, I'll let you talk.
 11 MR. BAILEY: If I can clarify a little bit what
 12 I meant by that, I will.
 13 CHAIRPERSON BUSCHING: Well, keep in mind that
 14 the issue on the agenda is whether there's reason to
 15 believe a violation occurred.
 16 MS. VARELA: Whether there was coordination
 17 between the Napolitano Campaign and all these other
 18 committees. So I think to the extent you were only
 19 going to address the matching funds, I think the Chair
 20 is correct.
 21 If you want to try to clarify, we'll see if
 22 what you have to say fits within the agenda item. I
 23 think the Chair is correct that matching funds, per se,
 24 don't fit within the agenda item and are not --
 25 MR. BAILEY: The issue -- I'm sorry for

Page 40

1 MS. VARELA: -- Campaign.
 2 Mr. Bailey is talking about matching
 3 funds based on all the activities that should be paid to
 4 the Munsil campaign. So, actually they're not covered.
 5 CHAIRPERSON BUSCHING: They're not the same
 6 thing?
 7 MS. VARELA: No. No.
 8 CHAIRPERSON BUSCHING: Okay.
 9 MR. BAILEY: Essentially what I'm asking is,
 10 the Committee needs to do an investigation to determine
 11 the appropriate amount of matching funds, because what
 12 has been reported by the independent expenditure --
 13 CHAIRPERSON BUSCHING: Mr. Bailey, there is a
 14 section in the public comment where you could raise any
 15 new issues on whether the Commission should do an
 16 investigation of something.
 17 MR. BAILEY: Respectfully, it's the same
 18 investigation we've been talking about.
 19 MS. VARELA: Actually, I don't think it is.
 20 You're talking -- what's before the Commission is
 21 whether the activities of all of these committees and
 22 these people, whether there has been coordination with
 23 the Napolitano Campaign. That's one issue.
 24 The amount of matching funds, whether there's
 25 been enough paid out or whether there should be more

Page 39

1 interrupting.
 2 The issue I intend to raise is one that was
 3 raised in the original complaint that the campaign
 4 filed. And it is the largest issue that was raised and
 5 it relates to whether the Committee should conduct an
 6 investigation.
 7 CHAIRPERSON BUSCHING: Okay. I mean, that's
 8 the item that we're talking about.
 9 And one of my colleagues pointed out, the next
 10 item on the agenda is the item regarding matching funds.
 11 So maybe your comments are more appropriately directed
 12 there, but --
 13 MS. VARELA: Actually --
 14 CHAIRPERSON BUSCHING: -- I'll let you go ahead
 15 and decide.
 16 MS. VARELA: Sorry, Chairperson for
 17 interrupting.
 18 The next two items, my understanding are
 19 whether matching funds should be paid to the Napolitano
 20 Campaign, based on the agenda items --
 21 MR. LANG: Other stuff.
 22 MS. VARELA: Not in this packet, not to the
 23 Munsil Campaign, but whether they should be paid to
 24 Napolitano --
 25 CHAIRPERSON BUSCHING: Right.

Page 41

1 paid out is a separate issue and is triggered by the
 2 reporting of these committees. I do think that's
 3 separate from whether there's been any coordination with
 4 the Napolitano Campaign.
 5 MR. BAILEY: With --
 6 MS. VARELA: Because even if the Commission
 7 were to conclude, no, there's no coordination, the
 8 matching funds is still a separate issue. They need to
 9 report and the Commission may or may not need to pay
 10 matching funds.
 11 MR. BAILEY: My issue is one of coordination
 12 and it's the issue of coordination we raise. And I
 13 would like to specifically speak about the coordination.
 14 Having Mr. Maddox already address the
 15 coordination of the Governor's office, I would like to
 16 speak about the coordination between the Project for
 17 Arizona's Future, Arizona Values Coalition, and Arizona
 18 Conservative Trust.
 19 Is that something you will allow me to
 20 do?
 21 MS. VARELA: Not under this agenda item.
 22 MR. LANG: She is not --
 23 MS. VARELA: I mean, I just don't think it's
 24 covered under this agenda item.
 25 The complaint is a complaint against the

Page 42

1 Napolitano Campaign and the Commission is trying to
2 decide whether or not there's been a violation by -- or
3 whether there's reason to believe to start an
4 investigation to look into whether or not there's
5 coordination.

6 The coordination between the other committees
7 is a separate thing. Somebody hasn't filed a complaint
8 against those committees and I don't -- speaking off the
9 top of my head -- I don't know that they properly could
10 file a complaint with an independent expenditure
11 committee just with the Commission. That's Secretary of
12 State.

13 MR. BAILEY: Well, the campaign did in its
14 complaint ask the Commission to investigate. Not only
15 did we complain against Governor Napolitano, but we
16 asked the Commission to investigate the coordination
17 among all the groups. And specifically alleged that the
18 in-kind contributions that pretty clearly have been made
19 according to the evidence collected by the Project for
20 Arizona's Future be considered.

21 And that was -- that was clearly set forth in
22 the complaint. So, the problem I have here is we stand
23 now some days after having filed the complaint, with
24 early balloting starting well before Mr. Blanchard's
25 groups have to report the source of their funding, and

Page 43

1 we did submit the issue to the Commission and simply
2 request that we be heard on it. And that's kind of --
3 that's kind of the overall thing.

4 We submitted that complaint to the Commission,
5 yes, against the Governor, but also with relation to the
6 coordination among all the groups. And, basically, both
7 Mr. Blanchard and Mr. Gordon in their responses raised
8 this straw man that diverted everyone's attention as if
9 this was the only issue that was in the complaint and it
10 clearly wasn't.

11 The complaint clearly was asking for
12 consideration of those other issues too. And so we're
13 kind of in a hard position, because we believed coming
14 in that there would be a hearing on our complaint. And
15 I'm only trying to raise issues that were addressed in
16 the complaint, and, quite frankly, the important issues
17 to us at this stage of the game.

18 CHAIRPERSON BUSCHING: Mr. Bailey, could you
19 direct the Commission and our counsel to what
20 specifically in the complaint you're referring to so I
21 can get -- so we can get some legal input as to whether
22 that's something that's --

23 MR. BAILEY: My apologies, Madame Chair. I
24 don't have a copy of my complaint with me.

25 COMMISSIONER KUNASEK: I don't neither.

Page 44

1 MR. BAILEY: If someone could let me borrow it.

2 COMMISSIONER KUNASEK: To that point, Madame
3 Chair, I guess the question I have based on Mr. Bailey's
4 comments, were -- should there have been two separate
5 investigations from the same complaint?

6 MR. LANG: Madame Chair, Commissioners, I'm not
7 sure if the question was directed at me.

8 COMMISSIONER KUNASEK: Anybody.

9 MR. LANG: I don't want to interrupt Mr.
10 Bailey, but we did issue matching funds yesterday of
11 \$1,800 based on their -- that was yesterday -- based on
12 their Website and based on their reporting. So we
13 continue to look into the matching funds issues.

14 There are some problems with the independent
15 expenditure committees' reports and we're working with
16 them to try to get the proper amount. It appears the
17 Munsil Campaign should have received another matching
18 funds in the primary, but because of reporting problems,
19 that didn't happen. So, that may result in an
20 enforcement action down the road, just an internally
21 generated enforcement action, but I don't know. But
22 we're still looking into that.

23 In my consideration, the issue here today is
24 whether or not a participating candidate violated Clean
25 Election rules bring coordinating with these campaigns.

Page 45

1 COMMISSIONER KUNASEK: So, then part of Mr.
2 Bailey's concern could -- could be further addressed in
3 the future?

4 MR. LANG: It could be. And, of course, he's
5 free to file a complaint just on that issue as well.

6 MR. BAILEY: And, respectfully, Madame Chair,
7 in answer to your question, the body of the complaint
8 under paragraph heading number two, is that entitled,
9 "Coordination Among Napolitano Project for Arizona's
10 Future, Arizona Conservative Trust, and Arizona Values
11 Coalition." And heading Roman Numeral III, "CCEC must
12 investigate." We simply requested that the Commission
13 must investigate these groups to determine who has been
14 funding them.

15 And it's -- it's clearly distinct and in the
16 complaint from the issue of whether the Governor -- the
17 issue of whether the Governor coordinated as to where's
18 this funding comes from.

19 Now, I appreciate Commissioner Kunasek's point
20 that we have time, but we don't. This is an election
21 coming up. We filed a complaint. And because neither
22 the Governor nor Project for Arizona's Future and its
23 subgroup saw fit to respond to that aspect of the
24 complaint -- which, in fact, they didn't, apart from one
25 line in Mr. Blanchard's response which related to the

Page 46

1 Project for Arizona's Future in-kind contributions or
2 alleged lack thereof to the Arizona Values Coalition --
3 they ignored the issue.

4 But I guess my question is, we timely submitted
5 the complaint, that's clear, and they chose not to
6 respond to it. And it seems to be on a basis that the
7 Governor and the Project for Arizona's Future didn't
8 respond to one issue, that the Commission won't hear it.
9 And that doesn't make any sense. Especially in light of
10 the time constraints that we have.

11 COMMISSIONER PARKER: Can you expound on that?
12 I didn't understand what you were saying about the one
13 thing.

14 MR. BAILEY: Well, I would be glad to. We laid
15 out a large case that suggested that the Project for
16 Arizona's Future was basically giving in-kind
17 contributions to the committees, which, in fact, amounts
18 to independent expenditures. We laid out that case and
19 that was, in fact, the bulk of our case in the
20 complaint.

21 We asked the Committee to investigate that
22 count -- that charge. And, basically, what's happened
23 -- I mean, in a nutshell -- suppose you're an
24 independent expenditure committee and you put on TV
25 commercials. Normally you would pay the actors, pay the

Page 47

1 cameraman, pay for the editing equipment, and then pay,
2 you know, Cox Cable to air the commercial.

3 Well, in this case essentially what's happening
4 is the only thing that's being reported is the payment
5 to Cox Cable. Because essentially, clearly from the
6 evidence, the Project for Arizona's Future is bringing
7 two political activists from out of state into Arizona
8 to hire them to ostensibly work for the Project for
9 Arizona's Future.

10 Those political activists work all summer,
11 spend the summer in Arizona, one of them came over from
12 the beach for goodness sake. But they spend the summer
13 in Arizona to work for the Project for Arizona's Future
14 doing who knows what. And then all of a sudden on a
15 particular date these two kids from outside of Arizona
16 are given a hundred thousand dollars in cash by the
17 Democratic Party.

18 And according to Mr. Blanchard's letter, not
19 only are they given the hundred thousand dollars in
20 cash, but it's clear the Democratic Party has no
21 interest in what they do with it. So: Hey, you guys
22 seem pretty nice, we're going to give you a hundred
23 thousand dollars and you spend it how you see fit.

24 Now, a number of the ways they spent it was
25 related to Len Munsil's record. And, essentially, it's

Page 48

1 clear what has happened is that substantial research has
2 been done. Mr. Munsil is a prolific writer and has been
3 for 20 years. And the Websites that the Arizona Values
4 Coalition and Arizona Conservative Trust have put
5 together, show evidence of having filtered through
6 everything he's ever written.

7 So, the question is, did the Project for
8 Arizona's Future employ Beau Memory and Seamus Perry to
9 come in at 8:00 and do some Munsil research and leave at
10 5:00. And then when all the research is done, turn them
11 over to independent expenditure committees and spend
12 money. The amount they're spending is only the last
13 step.

14 MS. VARELA: I'm sorry, Mr. Bailey. I'm going
15 to stop you right there.

16 At this point, I would recommend we go into
17 executive session so I can give you legal advice on how
18 to proceed.

19 CHAIRPERSON BUSCHING: Okay. Is there a
20 motion?

21 COMMISSIONER JOLLEY: I'll make that motion to
22 go into executive session.

23 COMMISSIONER KUNASEK: Second.

24 CHAIRPERSON BUSCHING: It's been moved by
25 Commissioner Jolley and seconded by Commissioner Kunasek

Page 49

1 that we go into executive session. All in favor say,
2 "aye."

3 (Chorus of ayes.)

4 CHAIRPERSON BUSCHING: Opposed, nay?

5 Chair votes aye. Motion carries.

6 On minutes of and discussions made in executive
7 session are confidential pursuant to ARS Section
8 38-431.03(B) and shall not be released to anyone unless
9 specifically authorized by law.

10
11 (Whereupon the public retires from the meeting
12 room.)

13
14 (Whereupon the Commission is in executive
15 session from 10:31 a.m. until 11:01 a.m.)

16
17 (Whereupon all members of the public are
18 present and the Commission resumes in general session.)

19
20 CHAIRPERSON BUSCHING: We will go back on the
21 record continuing with the Citizens Clean Elections
22 Commission meeting of September 28th.

23 We just adjourned from executive session to
24 receive legal advice. Minutes of and discussions made
25 in the executive session are confidential and shall not

<p style="text-align: right;">Page 50</p> <p>1 be released to anyone unless specifically authorized by 2 law. 3 We're on Agenda Item VI. And when we last 4 left, Mr. Bailey was speaking and our legal counsel 5 asked that we go into executive session. 6 Mr. Bailey, we have received legal advice in 7 executive session, and the result of that legal advice 8 is that -- and I guess the legal advice wasn't specially 9 directed to this -- we're not in a position to act on 10 what you were talking about before we went into 11 executive session. 12 And so either you can continue and it will be a 13 matter of an intellectual exercise today or we can move 14 on. 15 MR. BAILEY: Just for clarification from 16 perhaps one of the lawyers, are you saying the 17 Commission does not have authority to investigate 18 whether an independent expenditure is made? 19 Is that -- 20 MR. LANG: No. The issue before the Commission 21 is the issue of whether there was coordination. So the 22 questions about independent expenditure committees that 23 were raised in your complaint are something you are 24 permitted to talk about. So you can continue but it's 25 not something we can take action on today, because</p>	<p style="text-align: right;">Page 51</p> <p>1 that's not what I raised before the Commission and 2 that's not how the notice of public meeting read. 3 MR. BAILEY: Okay. In that case then -- 4 CHAIRPERSON BUSCHING: Could you speak up? 5 MR. BAILEY: I'm sorry. My position, and I'm 6 only pointing this out for clarification purposes, is 7 that we did raise our issue in our -- in our complaint 8 and so will a hearing be set on that question? 9 MR. LANG: It remains to be seen. 10 MR. BAILEY: We don't have to file another 11 complaint? 12 MR. LANG: You and I can discuss it. 13 MR. BAILEY: You're not asking for another 14 complaint then? 15 MR. LANG: Not at this time. 16 MR. BAILEY: Okay. Let me limit my remarks 17 then to some of the issues that have been raised 18 previously. 19 Again, if -- we now know that the Democratic 20 Party is, in fact, the funding sources for both the 21 Arizona Values Coalition and consequently the Arizona 22 Conservative Trust. 23 Now, the suggestion that the party would act by 24 funding pieces against an opposing candidate, even in 25 the primary without the Governor's approval, is not --</p>
<p style="text-align: right;">Page 52</p> <p>1 not something that's -- that's credible. 2 I want to point out the lengths to which the 3 Democratic Party went to cover up its involvement in 4 this. I'll remind you that last time I think many of us 5 were here, we were discussing an issue of an independent 6 expenditure that was unclaimed that was a push poll 7 phone call made on, I believe, the 1st of September. 8 Again, a negative attack on Len Munsil. Nobody 9 ultimately did claim that, but shortly thereafter the 10 Commission did award a substantial amount of matching 11 funds on the basis of the unknown independent 12 expenditure. 13 Now, on the 5th of September, the campaign 14 filed its complaint and request for matching funds and 15 we based a request of over two hundred thousand dollars 16 in that upon the precedent I believe in the Downing case 17 that the Commission had undergone. That same day the 18 Arizona Values Coalition was formed, the same day that 19 that request was made. And it was based on precedent. 20 Now, I think we're aware that the Commission 21 and staff had contact with the Napolitano Campaign on 22 the same day the complaint was filed, which provided the 23 Napolitano Campaign notice of the complaint being filed. 24 Now, what is the purpose of the Arizona Values 25 Coalition with respect to the Napolitano Campaign and</p>	<p style="text-align: right;">Page 53</p> <p>1 the Democratic Party? Well, that second committee, the 2 Arizona Conservative Trust, is the one doing stuff. 3 And, in fact, the Arizona Conservative Trust is at least 4 placed with officers that are Arizona people and fairly 5 obscure, I can tell you as a result of our 6 investigation. And we believe -- the campaign believes 7 they're backed by a Democratic activist consultant by 8 the name of Ralph Hughes. 9 That being said, why can't they just spend the 10 Democratic Party -- why can't they spend the hundred 11 thousand dollars of the Democratic Party? Well, the 12 inclusion of the Arizona Values Coalition -- the 13 formation of the Arizona Values Coalition on September 14 5th was necessary for two reasons, both of which imply 15 coordination. 16 First, if -- and we request that you 17 investigate to see who was responsible for the earlier 18 independent expenditure. But if it was some or many of 19 the same people, they've learned their lesson that they 20 can't spend the money without reporting. But according 21 to the status they had on the 5th of September, they 22 didn't want to report in the primary who was spending 23 the money in the Republican primary, especially with a 24 group under the name of Arizona Conservative Trust, 25 especially if that group was the Democratic Party.</p>

Page 54

1 So they form the Arizona Values Coalition with
2 these two kids from out of state who it turns out are
3 not obscured very well and we can find a lot of
4 information about them, and it turns out they're
5 partisan activists. But this committee is formed with
6 these kids. And it's obvious from the fact that this
7 committee is formed in a hurry. And I'll talk about
8 that in a second.

9 But the real key to the formation of this
10 committee on September 5th is not only did it hide
11 the -- the source of the funds being the Democratic
12 Party, it enabled them to act without reporting. And I
13 believe Mr. Gordon or Mr. Blanchard was saying it's
14 actually October 12th that they can go until actually
15 early balloting has already started before it ever
16 having been reported the source of the money and
17 independent expenditure. And all that implies
18 coordination.

19 And let me talk a little about how the Arizona
20 Conservative -- the Arizona Values Coalition was formed
21 in such a hurry. First of all, the involvement of the
22 officers of the committee still to that day in the
23 Project for Arizona's Future.

24 Secondly they had no idea at the time of
25 formation the day they supposedly received a check for a

Page 55

1 hundred thousand dollars, who they were working for or
2 what they were doing. They reported at the day of their
3 formation that they were working for Western Strategies,
4 a consulting group that had been filed in name only,
5 never completely formed by Thomas Ziemba. And still
6 even on the day of formation didn't know who they were
7 working for. It was quick.

8 I believe Mr. Blanchard in his response ended
9 up saying, well, they ultimately became independent
10 contractors. And that begs the question, independent
11 contractors for who? It should seem if they are on
12 their own, they're staffing a committee, they're working
13 for themselves. But they're independent contractors for
14 someone according to Mr. Blanchard.

15 And if you go through everything surrounding
16 that formation, including the later finance reports of
17 Arizona Values Coalition suggests that it was formed in
18 a hurry. Which, again, suggests some coordination among
19 the parties that we've discussed here.

20 All we're doing is asking the Commission to
21 investigate, get some e-mail records, get some bank
22 records, find out on what day the money was exchanged,
23 and that kind of thing. This isn't talking about
24 calling witnesses in here necessarily, although we
25 wouldn't argue with that.

Page 56

1 You can do just a basic investigation. Just
2 asking for some records and getting things and find out
3 the answers. It wouldn't take that much time or that
4 much resource.

5 The only other thing I'd add in response to
6 something Mr. Gordon said with respect to the Napolitano
7 Campaign's interest is just this idea it's just a gossip
8 column of North Carolina that suggested Beau Memory was
9 working for Governor Napolitano.

10 Well, that kind of information doesn't come out
11 of the blue. If it was Beau Memory's grandmother that
12 told him -- according to Howie Fischer and his recent
13 most recent article on the issue, he spoke with the
14 editor of the paper and the editor told him that Beau
15 Memory personally said he was working for Governor
16 Napolitano.

17 But regardless of who told them, Beau Memory
18 was back in rural North Carolina before he left, telling
19 people he was working for Governor Napolitano; that's
20 not a mistake that gets made. If you're going to work
21 for Project for Arizona Future, that's what you say.
22 People don't say: Did he say Napolitano? That doesn't
23 happen.

24 And, you know, in contrast to the earlier
25 complaints, there's out of every nook and cranny around

Page 57

1 this whole set of facts, smoke. And from our
2 perspective as a campaign, we've done as much as we can,
3 as David said, without the power to ask for records. I
4 would ask and I suspect they wouldn't give us any. But
5 we can't ask.

6 And this as good as it gets from a candidate
7 campaign. And this is as much as a candidate can get.
8 And now it's up to the Commission to take a look. You
9 have a choice.

10 Basically there's smoke coming of every nook in
11 the wall, every single one, and you -- you have the
12 choice to say: Is there fire back there or no? You
13 have the power to find out and we'd ask that you do
14 that.

15 CHAIRPERSON BUSCHING: Thank you.

16 MR. BAILEY: Thank you.

17 CHAIRPERSON BUSCHING: Other questions of Mr.
18 Bailey?

19 MR. BAILEY: Thank you for indulging us in the
20 consideration of the other issues and we'll be in touch
21 with staff.

22 CHAIRPERSON BUSCHING: Thank you, sir.

23 Is there anyone else that wishes to speak to
24 this matter?

25 Is there any rebuttal if there's no one

Page 58

1 else that wishes to speak?
 2 Mr. Blanchard --
 3 MR. BLANCHARD: We will be brief.
 4 CHAIRPERSON BUSCHING: -- your comments will be
 5 limited to five minutes.
 6 MR. BLANCHARD: Sure. And I'll be brief.
 7 We went at great lengths in our response
 8 to respond to the allegations that the Project for
 9 Arizona Future had provided some in-kind contributions.
 10 We deal with that and we have the affidavits that say
 11 there was none.
 12 So the second issue I want to bring to your
 13 attention is, yes, the second committee was brought
 14 together very quickly but we explained why. These two
 15 -- they call them kids, but they're two political
 16 operatives, Beau Memory and Seamus Perry, that were
 17 originally going to be consulting for ACT. They left
 18 their jobs August 15th. Nothing happened. Didn't
 19 become operational. It was only when they were told
 20 they could receive the money directly that they formed
 21 this second committee.
 22 There's a lot -- anyone can make accusations.
 23 I'm assuming that the Republican Party does an
 24 independent expenditure committee, they're going to form
 25 a committee with people they trust and going to write a

Page 59

1 check. And if there's people they trust and I'm sure
 2 people have connections to the Bush Campaign, Bush/Gore
 3 Campaign. People have connections they trust.
 4 There is no "there/there" here and certainly
 5 there's no indication, no connection to the Janet
 6 Napolitano Committee. You have affidavits -- again
 7 under oath from everyone involved -- and they show no
 8 coordination between the Napolitano Campaign and any of
 9 these entities. And that really is the issue that is
 10 before you today.
 11 You know, he can -- Mr. Bailey can speculate
 12 all he wants, but it's mere speculation. And I'll say
 13 affirmatively, my clients had nothing whatsoever to do
 14 with the verbal calls that resulted in the matching
 15 funds. I didn't know that was going to be an issue.
 16 That's pure speculation. There's no evidence. I think
 17 it shows to the lengths that they're pushing us.
 18 They want to turn mere speculation into
 19 evidence and have this result in an investigation. If
 20 that were to happen, mere speculation can result in an
 21 investigation of virtually every campaign committee and
 22 I ask you not to indulge in that kind of activity.
 23 CHAIRPERSON BUSCHING: Are there any questions
 24 of Mr. Blanchard?
 25 Thank you.

Page 60

1 Mr. --
 2 MR. MADDOX: Maddox.
 3 CHAIRPERSON BUSCHING: -- Maddox. Yes.
 4 Please.
 5 MR. MADDOX: Thank you. Just a couple of
 6 things by way of rebuttal.
 7 You closed, Madame Chairman, my time by
 8 basically asking us if we would put up or shut up by
 9 producing in mass. And we certainly said we would do
 10 that. The main argument on the other side as it relates
 11 to much of this is, this is just like the earlier Len
 12 Munsil thing. And I -- again, I just ask you focus on
 13 that.
 14 And we presented a letter where I outline
 15 everybody I talked to, all of our conclusions, and I
 16 swore that my investigation was what I said it was. And
 17 every individual involved, including the candidate,
 18 swore to the facts and that were correct.
 19 From the Governor we have an unsworn letter by
 20 Mr. Gordon -- and I'm not accusing him of anything --
 21 that he didn't swear to it and he didn't talk about his
 22 investigation. And we have something from the campaign
 23 manager which, among other statements in there, just
 24 said, "To the best of my understanding," which is not
 25 something where -- you know, they were talking about

Page 61

1 perjury. You're not going to get anybody for perjury by
 2 saying that's what I understood, because the answer to
 3 that is, gosh, I'm sorry, I was wrong.
 4 Doesn't say you ever talked to the Governor,
 5 doesn't say you did anything. Doesn't say you talked to
 6 the treasurer if there were funds or anything else.
 7 What you have been given is not a negation that
 8 we gave you. I agree we ought to deal with him like you
 9 dealt with us, either, you know, lay it all out, or if
 10 you want to go the other route, we'll go the other
 11 route. Let's go the other route and lay it all out and
 12 get it resolved and get it resolved in a hurry.
 13 The other comment was, how long is this going
 14 to take and we just want this to continue. As your
 15 Executive Director has already said, there's
 16 investigations that are going to continue whether you do
 17 anything or not. And the question is who's going to do
 18 it.
 19 And I go back to the Clean Elections is
 20 nonpolitical. You are the people that ought to be doing
 21 these kind of investigations. Hopefully the law will
 22 change. But, within the law, you can do the
 23 investigation and we'd ask you to do that.
 24 Thank you.
 25 CHAIRPERSON BUSCHING: Thank you. Any

Page 62

1 questions of Mr. Maddox?

2 MR. MADDOX: Sorry. I didn't meant to turn my

3 back on you.

4 COMMISSIONER SCARAMAZZO: No, that's fine,

5 thank you.

6 CHAIRPERSON BUSCHING: That's fine. Thank you.

7 Anyone else?

8 If not, Mr. Lang, having heard all the comments

9 and legal advice and everything else, do you want to

10 summarize your position at this point?

11 MR. LANG: Thank you, Madame Chair,

12 Commissioners. I guess I would like to address Mr. --

13 Commissioner Kunasek's question, do we have the time and

14 do we have the tools? And the answer is, we do. We

15 have the time, we have the tools. We are, obviously,

16 very busy, but something of this importance we can do an

17 investigation.

18 But you see, we recommended to not do it and

19 that's because there's a third question, do we need the

20 investigation? In my view we do not. I'm satisfied by

21 the affidavits we've received by the folks. I've

22 already gone over them.

23 But I would say that Noah Kroloff the campaign

24 manager of Napolitano Campaign said emphatically and

25 clearly:

Page 64

1 something I considered. But in my view, the Commission

2 has the power and the authority to investigate whether

3 or not there was coordination.

4 And for the reasons I've already described,

5 that's why I don't think we need to look into that.

6 As to the relationship between AVC, ACT, and

7 the Project for Arizona's Future, they may have been

8 totally illegally channeling money between them, between

9 the Democratic Party. But unless there's coordination

10 with the Napolitano Campaign, for our purposes -- for

11 Clean Elections' purposes, that's irrelevant.

12 Now if it turns out that these committees

13 failed to report and as a result there were no matching

14 funds issued that should have been issued, you can bet

15 I'll bring a self-generated complaint before you. And

16 that's something we are looking into and continue to

17 look into. So I'll be working with Mr. Bailey on that.

18 But in terms of the relationship between the

19 committees and whether they did everything right, that

20 is not something that I believe staff should focus on.

21 And so that's what you have before you, was

22 there coordination? And to me the answer is a

23 satisfactory no based on the several affidavits we

24 received.

25 CHAIRPERSON BUSCHING: Thank you.

Page 63

1 "Neither the Governor nor the Napolitano

2 Campaign has acted in cooperation with" --

3 COURT REPORTER: I'm sorry. I'm sorry, Mr.

4 Lang?

5 MR. LANG: Too fast?

6 COURT REPORTER: Yes.

7 MR. LANG: Okay.

8 COURT REPORTER: "Cooperation" is where I lost

9 you.

10 MR. LANG: What word?

11 COURT REPORTER: "Cooperation."

12 MR. LANG: All right.

13 "Cooperation with, consultation with, in

14 concert with or provided information to Beau

15 Memory, Seamus Perry, AVC or ACT regarding the

16 expenditures of either AVC or ACT. We have not

17 attempted in any way to coordinate with them."

18 Now, if they're lying -- and he goes on.

19 If he's lying about this, he's subject to criminal

20 sanctions. And I think it's pretty clear.

21 I understand that perhaps the, you know, that

22 perhaps Andy Gordon could have sworn his letter and

23 those sorts of things, but I'm quite comfortable with

24 the information we've received.

25 I'd also say that Mr. Bailey's concerns are

Page 65

1 COMMISSIONER KUNASEK: I have a question for

2 Mr. Lang.

3 Mr. Lang, in the event that one of these other

4 investigations to the attorney -- the Secretary of

5 State's investigation, comes up with some pretty solid

6 evidence that perhaps would discredit the sworn

7 statement, then who is -- who is the complainant in that

8 case: Secretary of State or John Q citizen?

9 MR. LANG: If we received information that

10 indicated any of these affidavits are fictional, that

11 would be something we'd refer to the Attorney General

12 for enforcement. But I can assure you we would reopen

13 the case if there was reason to do so -- at least I'd

14 ask you to reopen the case.

15 If it turns out any of these folks are lying,

16 the criminal sanctions are not important to me. What's

17 important to me is the integrity of the law. And if it

18 looks like there was coordination, I would be the first

19 to ask to reopen it.

20 COMMISSIONER KUNASEK: Not only with this case,

21 but any?

22 MR. LANG: Any case.

23 COMMISSIONER KUNASEK: Any case. Thank you.

24 MR. LANG: That goes for the Munsil Campaign as

25 well.

Page 66

1 CHAIRPERSON BUSCHING: And when you say
 2 "reopen," you mean either -- you mean file your own
 3 complaint?
 4 MR. LANG: Internal complaint, yeah.
 5 CHAIRPERSON BUSCHING: Yeah. Commissioner
 6 Parker?
 7 COMMISSIONER PARKER: Due to the high profile
 8 of this case, I personally feel that we owe it to all
 9 Arizonans to show that the CECC [sic] is taking its job
 10 seriously and to really fully investigate this whole
 11 matter just to make sure that indeed no violations have
 12 occurred.
 13 CHAIRPERSON BUSCHING: Okay. Other comments or
 14 questions for Mr. -- other questions for Mr. Lang or
 15 comments by members of the Commission?
 16 All right. Someone want to make a motion?
 17 Commissioner Jolley?
 18 COMMISSIONER JOLLEY: Yes. I will make a
 19 motion in regard to -- or in reference to Agenda Item
 20 VI, MUR 06-0018, complaint against Janet Napolitano,
 21 that the Commission find that there is no reason to
 22 believe that the Respondent may have violated ARS
 23 16-941(A)(1) and dismiss this matter under review.
 24 CHAIRPERSON BUSCHING: Is there a second?
 25 COMMISSIONER SCARAMAZZO: I'll second that.

Page 67

1 CHAIRPERSON BUSCHING: It's been moved by
 2 Commissioner Jolley and seconded by Commissioner
 3 Scaramazzo that we find no reason to believe in MUR
 4 06-0018, complaint against Janet Napolitano. Any
 5 further discussion?
 6 If not, the Chair will call for the question,
 7 all in favor say "aye."
 8 COMMISSIONER JOLLEY: Aye.
 9 COMMISSIONER SCARAMAZZO: Aye.
 10 CHAIRPERSON BUSCHING: Aye.
 11 Nay?
 12 COMMISSIONER PARKER: Nay.
 13 COMMISSIONER KUNASEK: Madame Chair, may I
 14 explain my vote?
 15 CHAIRPERSON BUSCHING: Let me finish. Is it
 16 appropriate --
 17 COMMISSIONER KUNASEK: I haven't voted yet.
 18 CHAIRPERSON BUSCHING: Oh, I'm sorry. All
 19 right, yes.
 20 COMMISSIONER KUNASEK: I will explain my vote.
 21 CHAIRPERSON BUSCHING: All right. Well --
 22 COMMISSIONER KUNASEK: I appreciate the concern
 23 of both sides in this case and I understand the fact
 24 that timing is of the essence. We're down to
 25 practically just a month before the general election.

Page 68

1 I don't know how long an investigation would
 2 take. I do put some value in sworn statements and that
 3 was perhaps the purpose of my last question to Mr. Lang,
 4 is if one of the investigations by the Secretary of
 5 State in this case would prove that there were false
 6 statements filed and sworn to, then I think that the
 7 other parts of the law would probably -- other parts of
 8 the statutes which pertain to perjury would probably be
 9 far more penalizing; however, far less timely.
 10 I, at this time, in view of the faith I put in
 11 a sworn statement, I will have to support the motion.
 12 So I vote aye.
 13 CHAIRPERSON BUSCHING: Thank you.
 14 All right. We were at the point where I
 15 believe there was a vote then of four "ayes" and one
 16 "nay," if I'm correct with Commissioner Parker voting
 17 "nay," so the motion carries.
 18 We'll move to Item VII, consideration and
 19 possible action regarding issuance of matching funds to
 20 Janet Napolitano for Websites.
 21 Mr. Lang?
 22 MR. LANG: Thank you, Madame Chair,
 23 Commissioners. You have before you a request, my view
 24 on the request by Andy Gordon on behalf -- you have his
 25 -- you have my memo, you have his letter of September

Page 69

1 20th, and then you have some news articles.
 2 But, basically, what the Napolitano Campaign is
 3 asking for is matching funds based on three
 4 anti-Napolitano Websites. And staff took a look at
 5 those Websites and considered whether they constitute,
 6 first of all, expressed advocacy and whether or not
 7 matching funds should be issued.
 8 The first site is a site called StopJanet.org.
 9 It's certainly expressed advocacy. You know it's
 10 emphatic that she shouldn't be re-elected. Staff
 11 contacted the person who owned the domain, the Web
 12 Master, and basically it's something he does himself.
 13 It's a self-made Website, he spends no money in it.
 14 So the only value there is the cost of the
 15 domain which is anywhere from \$7 or \$8 to \$12 or \$13.
 16 He doesn't pay for any other service.
 17 The second site is a site that's anti -- it's
 18 basically just a page. It's a site that's used for
 19 other purposes, AmericanPatrol.com, and then they have a
 20 page that criticizes the Governor at length. There's no
 21 cost there really. I mean, I suppose they pay the Web
 22 Master something to put it up, but my understanding is
 23 it is largely a volunteer site. But we found -- staff
 24 found no real cost. It's simply the domain is already
 25 owned and it's just a page.

Page 70

1 The third site VetoJanet.org is a site produced
2 by the Arizona Republican Party and it's been up since
3 before the primary. So there's a couple problems there.

4 One is, is it expressed advocacy? The other
5 two clearly were. This one is more questionable.
6 Though it's critical of the Governor, it does not do so
7 in the context of the election. In fact, it was put up
8 before the primary. And largely what it shows is her
9 position on a number of issues she vetoed and they
10 criticize her for that.

11 So arguably that could be considered expressed
12 advocacy by the Commission. But given it has possibly
13 dual educational purpose and given the nature of that, I
14 recommend that we not issue matching funds.

15 That's the only one that would have resulted in
16 any even a marginally significant amount of money. It
17 would have been worth \$420.

18 There are dozens of Websites criticizing the
19 Governor, there are dozens of Websites criticizing Len
20 Munsil, criticizing Mr. Goldwater, criticizing
21 candidates. And the sites of significant value like the
22 LenMunsilFacts.org, we have consistently awarded
23 matching funds for.

24 But in this case, in sites that have a marginal
25 value of \$12 at best, in the case of the two sites,

Page 71

1 those are the easy cases. And I strongly recommend that
2 we not issuing matching funds or we will be issuing
3 matching funds from here until the cows come home.

4 As for a VetoJanet, that's a tougher case
5 because it does have real value. But, again, based on
6 my view that it has the educational purpose and it is
7 not only expressed advocacy, I recommend that we not
8 issue matching funds.

9 CHAIRPERSON BUSCHING: Thank you.

10 MR. LANG: That one is a close call.

11 CHAIRPERSON BUSCHING: Are there questions of
12 Mr. Lang?

13 Okay. Is there anyone from the public that
14 wishes to speak to this matter?

15 Mr. Gordon?

16 MR. GORDON: Chair and Commissioners, Andy
17 Gordon for Janet Napolitano. With all due respect,
18 these Website are beginning to have a never-neverland
19 quality to them.

20 We got hauled in here for the very first
21 complaint and spent months arguing about whether a
22 Website that we put up had value or not, and lots of
23 information to the Commission about what these Websites
24 are worth. And in that we ultimately settled that case.

25 Mr. Munsil then comes in for a Website, very

Page 72

1 recently, criticizing him and he gets -- I don't
2 actually know, I think it was \$1,250 for the Website,
3 something. I think it was something like that.

4 CHAIRPERSON BUSCHING: \$12.50?

5 MR. BAILEY: No. No. \$1,250.

6 We then send in three Websites and
7 because two of them are fairly simple Websites, the
8 conclusion of the Commission is that they have no value
9 -- or, excuse me. Excuse me. The Commission hasn't
10 made a conclusion yet. Todd recommends that they have
11 no value. And then has a different recommendation on
12 the Republican side, which I'm going to discuss somewhat
13 separately.

14 I guess you can sort of understand my
15 frustration in this. It doesn't seem to matter which
16 way we turn, the other side gets money and we don't.

17 I do -- this isn't an I-told-you-so, but early
18 on we urged the Commission to take the view that
19 Websites and e-mails to follow the federal view,
20 basically have no value. But you can't -- this position
21 you've got yourself in now trying to evaluate separate
22 Websites, it's just -- it's just unworkable in our view.
23 And there's no real coherence to the approach that I can
24 see.

25 The Republican Website and I -- were copies of

Page 73

1 the Website given? I don't know.

2 COMMISSIONER JOLLEY: Yes.

3 MR. LANG: I don't think they were.

4 MR. SMITH: Pardon?

5 MR. LANG: I don't think they were.

6 COMMISSIONER PARKER: Here's the front page
7 here.

8 MR. GORDON: Well, you actually go to the
9 Website and the Website is still up, I checked it
10 yesterday. I didn't bring enough copies. But it's got
11 a less-than-complimentary picture of the Governor. It
12 says, "Governor No" with a "Veto" and a leather glove.
13 And then, "Governor Janet Napolitano takes the meaning
14 of obstructionist to new heights."

15 To find that this site doesn't constitute
16 expressed advocacy at this point in time would say that,
17 as long as you don't use the magic words, you know,
18 "vote for" or "vote against", you can be as critical as
19 you want to be and not be engaged in expressed advocacy.

20 If that's how the Commission comes down, that's
21 fine. But I certainly hope the Commission then is
22 consistent in that approach. That no matter how
23 critical the Website is, as long as it doesn't use those
24 magic words, it's not going to constitute expressed
25 advocacy.

Page 74

1 The fact that this Website was put up during
 2 the legislative session, isn't really important because
 3 the Website is still up. If they put the Website up and
 4 then took it down, yeah, then it would make -- but the
 5 fact is, it's broadcasting every day.
 6 And if the fact that you put it up early
 7 somehow gives you an escape hatch, then the opportunity
 8 for mischief is enormous. Because all someone has to do
 9 is say, okay, let's get it up early and just keep it
 10 running the whole time and you'll never get matching
 11 funds.
 12 So, the fact that it is still up, it's like a
 13 television ad that's still running on a slot.
 14 So, you know, we'll live obviously with the
 15 outcome. I just -- on the value of Websites, there's
 16 got to be some uniformity. They're either worth
 17 something or they're not worth something. They can't --
 18 we can't be bouncing all over the place.
 19 And -- oh, one last thing on the -- I will note
 20 that the Republican Website says, "Paid for by the
 21 Republican Party. Not authorized by any candidate or
 22 candidate committees." Parties do that which sort of
 23 relates to the last item whether there's coordination or
 24 not.
 25 In any event, I just ask that you be

Page 76

1 MR. GORDON: I know that feeling.
 2 COMMISSIONER SCARAMAZZO: -- I believe that
 3 what we investigated in that or what the discussion that
 4 took place was the timing of the Website and funding of
 5 the Website; isn't that correct, not expressed advocacy
 6 in that case?
 7 MR. LANG: That's right.
 8 MR. GORDON: Well, Commissioner Scaramazzo, it
 9 wasn't expressed advocacy, but you retained a consultant
 10 who went out to try to put a value on the Website. We
 11 produced lots of documents. We spent a lot of time --
 12 the Commission spent money and we spent time and money
 13 on this whole notion of: How much is the Website worth?
 14 That case was ultimately resolved. That was
 15 not the ultimate question. My point is we spent a lot
 16 of time, and I was urging the Commission at that time to
 17 take the view, as does the FEC, that Websites and
 18 e-mails do not have an intrinsic value for some of the
 19 reasons this illustrates. That is what I was trying to
 20 say. And if I was less than clear, I apologize.
 21 CHAIRPERSON BUSCHING: Mr. Gordon, are you
 22 suggesting -- I understand you're suggesting that you
 23 want consistency, but are you suggesting then that the
 24 Executive Director is not correct here in recommending
 25 that these have no value and thus issue no matching

Page 75

1 consistent. If there's not going to be a value, no
 2 value. And if this -- and I'll leave it here in case
 3 any Commissioners want it -- if they want to -- if you
 4 all conclude that this is not expressed advocacy, then I
 5 really urge that in future cases that that be dealt with
 6 the same way.
 7 I'm glad to answer any question of the
 8 Commission. Again, thank you for listening to me.
 9 CHAIRPERSON BUSCHING: Commissioner Parker?
 10 MR. GORDON: Yes, Commissioner Parker.
 11 COMMISSIONER PARKER: Do you happen to know if
 12 the two smaller ones are generating a lot of hits?
 13 MR. GORDON: I don't know. I don't know.
 14 COMMISSIONER PARKER: Okay.
 15 MR. GORDON: I have no way of knowing how many,
 16 you know. I don't know.
 17 COMMISSIONER PARKER: I'm assuming that the
 18 Republican Party one would have significantly more hits
 19 than these other two.
 20 MR. GORDON: Again, I don't know.
 21 COMMISSIONER SCARAMAZZO: The question in my
 22 mind concerning one of your comments, Mr. Gordon, was
 23 you got hammered from the Commission on your Website.
 24 If my memory serves me correctly, and there are times
 25 when it doesn't --

Page 77

1 funds? Or are you now suggesting that they do have
 2 value?
 3 MR. GORDON: Well, I believe these have as much
 4 value as the ACT Website that you just gave Candidate
 5 Munsil money for.
 6 What I'm saying is Websites are difficult to
 7 value. There's no distinction on that. And I think the
 8 Commission ought to do one of two things: Either say
 9 this is the amount that Websites are going to be valued
 10 at; or they're going to be valued at zero.
 11 But to go in and talk to someone: Oh, I did it
 12 myself, it didn't really take much. It just doesn't
 13 make any sense to me. That's what I'm saying,
 14 Commissioner Busching.
 15 I would either fix a value or say zero value.
 16 My view is you ought to say zero value, which undermines
 17 me getting any money here, but at least everyone can go
 18 forward at that point.
 19 CHAIRPERSON BUSCHING: Okay. Thank you.
 20 Commissioner Parker?
 21 COMMISSIONER PARKER: No.
 22 CHAIRPERSON BUSCHING: Commissioner Kunasek?
 23 COMMISSIONER KUNASEK: My question was just
 24 answered.
 25 CHAIRPERSON BUSCHING: Okay. Thank you.

Page 78

1 MR. GORDON: Thank you.
 2 CHAIRPERSON BUSCHING: Anybody else wish to
 3 speak to this matter?
 4 If not, Mr. Lang?
 5 MR. LANG: Thank you, Madame Chair,
 6 Commissioners. Actually, I don't agree -- I don't
 7 disagree with a lot of what Andy Gordon said.
 8 I agree that staff is going to take a look at
 9 Websites after the election cycle is over and recommend
 10 some policies for the Commission to consider for the
 11 reasons described, that these are difficult cases and we
 12 don't want to be in the business -- especially with
 13 these little sites -- of figuring out how much they're
 14 worth. That is something we are going to look at and
 15 that is something we decided to look at after the
 16 Napolitano matter that he referred to.
 17 He did mention though that suddenly we're
 18 looking for magic words for expressed advocacy, and
 19 that's just not the case. What we're looking for --
 20 magic words make it easy. But what we're looking at is
 21 criteria under the 16-901.01 statute. And those are the
 22 timing of the communication, whether you're mentioning
 23 the name of candidates, whether you're putting that
 24 candidate in a positive or negative light.
 25 All those indications are that the ad you have

Page 79

1 going around is, in fact, expressed advocacy. It's a
 2 nasty attack on the Governor. And under the criteria it
 3 would be expressed advocacy, except remember the final
 4 criteria under the Fergach (phonetic) case of the Ninth
 5 Circuit is, is there no other reasonable meaning?
 6 This one could have gone either way. And I
 7 don't consider it precedent because it could have gone
 8 either way. But found there was a reasonable
 9 alternative meaning. But I think it would be quite easy
 10 for the Commission to say, no, this is expressed
 11 advocacy and issue the \$420 in matching funds and I
 12 would be quite comfortable with that. That was my
 13 recommendation based on the fact that I thought it was an
 14 educational Website.
 15 And with that said and some of Mr. Gordon's
 16 points are legitimate about the concerns of criteria in
 17 Websites. In this case, I think it's VetoJanet, it's
 18 like a sign in the sense -- although it's quite
 19 different because it can be updated and all that --
 20 signs that are bought during a primary can used in
 21 general and not going to issue matching funds in general
 22 if they're purchased properly.
 23 Well, this Website was purchased during the
 24 primary, and so that's when the matching funds should
 25 have been issued but they were not. And so that made

Page 80

1 the case easier for me. It was a close call. There's
 2 expressed advocacy and alternative purpose. Well,
 3 ultimately, the money should have been issued in
 4 primary.
 5 That also begs the question, and I am sure Mr.
 6 Gordon's response will be: Well, wait a minute, are you
 7 saying that Websites you can just put them up early?
 8 And the answer of course is, no. It depends on the
 9 purpose of each case and if the Website is updated and
 10 what the purpose is, you know a lot of criteria and it
 11 becomes difficult.
 12 So, I agree we should do something regarding
 13 policy in the future, but in this case I stand by my
 14 recommendation.
 15 CHAIRPERSON BUSCHING: Thank you. Any
 16 questions of Mr. Lang?
 17 If not, is there discussion among the
 18 Commissioners or a motion?
 19 COMMISSIONER SCARAMAZZO: I'd move that we deny
 20 the issuance of matching funds in the case of these
 21 Websites.
 22 CHAIRPERSON BUSCHING: Is there a second?
 23 COMMISSIONER KUNASEK: I second that.
 24 CHAIRPERSON BUSCHING: It's been moved by
 25 Commissioner Scaramazzo and seconded by Commissioner

Page 81

1 Kunasek that we deny issuance of matching funds for the
 2 three Janet Napolitano Websites. Further discussion?
 3 If not, the Chair will call for the question,
 4 all in favor say, "aye."
 5 (Chorus of ayes.)
 6 CHAIRPERSON BUSCHING: Opposed, nay?
 7 Chair votes aye. Motion carries.
 8 Agenda Item VIII, MUR 04-0023, David Burnell
 9 Smith, discussion, consideration, and possible action
 10 regarding settlements of judgment.
 11 Mr. Lang?
 12 MR. LANG: Madame Chair, Diana Varela has been
 13 in conversations with Mr. Smith and I think she has some
 14 comments she would like to make.
 15 CHAIRPERSON BUSCHING: Thank you.
 16 MS. VARELA: Thank you, Madame Chair,
 17 Commissioners. I met with Mr. Smith and his attorney
 18 last week and currently the status of that case is that
 19 there is a final judgment regarding monetary penalties
 20 that were imposed by the Commission. And I apologize to
 21 Mr. Smith, you probably know, but I don't have it in
 22 front of me. I believe it's between \$40- and \$45,000.
 23 Mr. Smith would like to ask the Commission to
 24 reduce the amount that it would accept as a settlement.
 25 But we -- as I said, I spoke with him and his attorney

Page 82

1 last week and we agreed that it would be better for him
2 to come down and make a brief presentation to the
3 Commission.

4 So, I want to thank him for coming today and I
5 apologize that it's so late in the day that we're
6 getting to you, but I'll have Mr. Smith actually speak
7 to the Commission.

8 CHAIRPERSON BUSCHING: Okay. Mr. Smith?

9 MR. SMITH: Madame Chair and members of the
10 Commission, thank you for this opportunity to speak to
11 you. It's been a rough road, as you know, Madame Chair.
12 You've been part of it for a long time. Mr. Scaramazzo,
13 you've been part, Ms. Jolley you've been part of it.

14 About two years ago I sat in this same seat and
15 I had a check in my hand for \$2,500 to resolve the
16 issue. And at that time, the Executive Director Colleen
17 Connor and I reached an agreement, but there were some
18 forces out there that came up and objected to it.

19 CHAIRPERSON BUSCHING: Could you speak up,
20 please?

21 MR. SMITH: Yes.

22 There were people out there that objected
23 to it and the Commission went ahead and objected to the
24 agreement and we went on to investigation, which
25 ultimately recommended that I be removed from office,

Page 83

1 that I repay the \$34,000 to the Clean Elections fund,
2 and a \$10,000 fine.

3 To tell you the truth, if we go back in time
4 and I was sitting here and would have started that
5 investigation, I would have resigned. I would have
6 resigned from office, because it's been such a heartache
7 for me, and my family, and my friends.

8 I want to -- before I go on, I want to thank
9 your attorney, Diana Varela, who has been exceptionally
10 professional and courteous to me during the whole time.
11 We've never ever had ill words between the two even in
12 the arguments we had. It's always been she had a point
13 of view and I had a point of view and my attorneys had a
14 point of view and no animosity at all.

15 You're a very good attorney.

16 MS. VARELA: Thank you.

17 MR. SMITH: Obviously, because you won the case
18 and we didn't for a lot of reasons. But I don't want to
19 discuss that with you. I want to discuss with you why
20 we came here to reconsider. It's time we end the saga.
21 Right now we have the appeal in the Court of Appeals.
22 We can go to the Arizona Supreme Court and onto the
23 United States Supreme Court, if I want to. But I want
24 to end the saga. I want to end it for me, and my
25 family, and even for the Clean Elections Commission.

Page 84

1 You've got more cases that you need to handle.

2 Let me just tell you a little bit about my
3 background. I don't want to be too lengthy on that. I
4 was born in West Virginia. I worked my way through high
5 school delivering newspapers and working in the theatre.
6 I worked my way through college by working at a bank all
7 night and taking a full load at college. I went to law
8 school and worked full-time with Geoffware (phonetic)
9 Corporation.

10 I worked as a lawyer in Arizona since 1983 in
11 private practice. I do personal injury and I do
12 criminal. I do some medical malpractice.

13 When the newspapers come out and say that
14 ousted Representative Smith doesn't deserve your trust
15 or your vote, it affects every aspect of your life. To
16 see your picture on the front page calling for the
17 ousting. Seeing your name said, "Take a blow torch to
18 remove him from office," takes a toll.

19 People have called my office and said, "Are you
20 the David Smith that's in the legislature? Okay. I
21 don't want to hire you." I've had people throughout my
22 career that would come to me and say, "We want you to
23 resign from our case because of all the problems you've
24 got." It's taken a tremendous toll on me. I'm a
25 tainted lawyer.

Page 85

1 I talked with a friend of mine who was a judge
2 the other day. I was a judge in Peoria and Cave Creek.
3 I was a pro tem judge for Superior Court and justice
4 courts. And he said to me, "David, don't apply. With
5 your background with this Clean Elections, you can never
6 be appointed." That hurts.

7 I had two very hard experiences and those of
8 you who have been elected to offices know, it's a
9 tremendous privilege to represent your people of this
10 state and the people of your district. And I took that
11 job very seriously and I think I did a good job.

12 The two saddest days in my life was: One, the
13 day I had to resign in front of the legislature looking
14 at the people who were sworn in with me, people I've sat
15 on committees with, people who trusted me, and the
16 people of my district who voted for me and the people of
17 Arizona. This battle has not been good for the state of
18 Arizona, it's not been good for the Arizona Clean
19 Elections Commission, and it's not been good for me.

20 When I addressed the legislature, I said to
21 them that I will be back. I say that for one reason,
22 because it was my hope and dream to continue with the
23 legislature. As Mark Twain says, "At the end of your
24 life, some of your dreams will never be as great as your
25 accomplishments."

Page 86

1 In my case, my accomplishments will never be as
 2 great as my dreams because of what's happened to me.
 3 CHAIRPERSON BUSCHING: Mr. Smith, please speak
 4 up.
 5 MR. SMITH: Okay. What has happened to me.
 6 And, you know, I'm sorry for this whole endeavor. I
 7 apologize for what I wish we didn't have to go through
 8 but we did.
 9 But the problem I have is that my legacy will
 10 always be, he's the ousted legislative. That any other
 11 accomplishments that I've ever done -- AV lawyer, cases
 12 I've won, judge seats that I've sat in -- will not be
 13 remembered. So, I told the legislative I'll be back.
 14 I ran this last time and the newspapers beat me
 15 up again and said, you know, we can't support David
 16 Smith because he's not worthy of your vote or your
 17 trust. It was a close election but I lost it.
 18 And I said I had two sad days in my life,
 19 besides the death of my parents and death of my
 20 relatives. The second saddest was primary night at 8:30
 21 at night when I got the word that you're no longer going
 22 to be a candidate for the state legislature in Direct 7.
 23 You just lost. You came in third. Therefore, all my
 24 dreams, all my policies I wanted for the state of
 25 Arizona disappeared from me for the rest of my life.

Page 88

1 Candidate David Gowen. I was a better attorney for
 2 David Gowen than I was for myself because I got the
 3 Commission to dismiss that complaint and \$10,000 because
 4 he went back and did his amended financial statement as
 5 I did, as I advised him to. He did it and you dismissed
 6 your complaint against him.
 7 I wish we could have done that for me. I'm
 8 asking you to consider that today.
 9 I came here with a check for \$2,500. Rest
 10 assured that I know that you probably will not accept
 11 that today, but I think you fine people around \$5,000
 12 and not remove them from office. That's a great, great
 13 challenge. It's a great penalty to do on someone,
 14 someone who really wanted to do public service and knows
 15 now that I can never do public service again. You feel
 16 the honor as you did when you serve in the legislature,
 17 some of you may have also, and when you lose that honor,
 18 part of you goes away.
 19 But one last word, I'm afraid on my tombstone,
 20 which I hope is later not sooner, that they don't put
 21 the only legislature to be ousted in this whole United
 22 States. That's what I got to live with every day. I
 23 walk down the street, people say that to me, judges look
 24 at me, I lost respect, I lost my reputation, and I'm
 25 asking you to understand.

Page 87

1 Making education better, reducing taxes for
 2 this state, and reforming immigration policy, all which
 3 were on my agenda but will never have an opportunity to
 4 come forth from me.
 5 It's a very sad day when you have your dreams
 6 completely wiped out.
 7 Financially this thing has killed me. I lost
 8 \$50,000 my first year in district seats from my
 9 business. The second year I was removed, I lost all the
 10 income from the state legislative which people say is
 11 not very much but it adds up to about \$30,000 of your
 12 per diem. I lost that. I had my attorney's fees and
 13 costs and expenses probably a hundred thousand dollars.
 14 But that means very little when you see that
 15 your name you've tried to work for your life, 30 -- 25
 16 years as a lawyer in this state, that has been
 17 tarnished. I'm like a wounded deer. I will never,
 18 never escape that.
 19 I'm just asking you to consider reducing this
 20 because it's the right thing to do. The \$10,000 that
 21 you fined me, I went back and admitted my financial
 22 statements to show all the subcontractors that -- that
 23 we spent money on. I did that.
 24 I came in this Commission, as you might
 25 remember, Ms. Varela I'm sure remembered, I represented

Page 89

1 Follow-up real quick. I told Diana Varela that
 2 I would not file a written motion. I didn't know how
 3 you do -- whether or not you wanted to look at this.
 4 And if you prefer more information submitted to you, I
 5 would be happy to do that.
 6 But the right thing to do, I believe, is to let
 7 me go on with my life as it may be now and let me pay
 8 the fine and let me go. Let me go.
 9 CHAIRPERSON BUSCHING: Thank you. Are there
 10 questions of Mr. Smith?
 11 Commissioner Jolley?
 12 COMMISSIONER JOLLEY: I would just like to
 13 comment to Mr. Smith that in your presentation to the
 14 Citizens Clean Elections Commission, you've always been
 15 very gentleman and very civil in your presentation. So,
 16 I thank you for that.
 17 MR. SMITH: Thank you, Commissioner.
 18 And I would say this, that the Chair and
 19 all of you who I've dealt with have been, even in
 20 debates, but always in my view, all of you have been
 21 professional.
 22 Mr. Lang has been very professional with the
 23 little bit he's had with me. And, as I say, Ms. Varela,
 24 no one could be better than her and her staff.
 25 CHAIRPERSON BUSCHING: Thank you.

Page 90

1 Commissioner Kunasek?

2 COMMISSIONER KUNASEK: Well, there's a couple

3 things. I know very little. I, quite honestly, did not

4 follow it even in the newspaper.

5 I don't know, Mr. Lang, were you the Executive

6 Director at that time?

7 MR. LANG: I was not.

8 COMMISSIONER KUNASEK: In my case, I have no --

9 no history of what went on. And the question I have is,

10 do we have an issue in front of us today as we've

11 been -- because I don't remember reading anything in our

12 packet? Or is just this to be listening at this time to

13 decide and -- okay. I'll let you answer that one then

14 I'll go on.

15 CHAIRPERSON BUSCHING: Mr. Lang?

16 MR. LANG: It would have been helpful if I had

17 put a copy of the judgement in the packet. But the

18 judgement is for approximately \$44,000: \$10,000

19 penalties and approximately \$34,000, the Commission

20 required him to return his funds. And so, obviously,

21 he's asking that a significant portion of that be

22 forgiven.

23 The only thing I would mention, as I was not a

24 participant in the enforcement action, but I have dealt

25 with Mr. Smith on several occasions both in our office

Page 91

1 and over at the legislature, and he has been absolutely

2 cordial to me. And if there's ever a legislative who

3 had reason to be rude to me or to our staff, it would be

4 Mr. Smith for better or worse.

5 And, you know, I think we were correct in the

6 position the Commission took. But, you know, I think

7 he's paid the biggest penalty which is that he has been

8 removed from office.

9 CHAIRPERSON BUSCHING: Thank you.

10 Did you have any questions?

11 COMMISSIONER KUNASEK: Well, I just have to

12 tell Mr. Smith, I share your pain. I too was removed

13 from office by virtue of the fact -- I don't know if you

14 remember my history. I was senate president when we had

15 to conduct the impeachment of a governor. His

16 supporters in my district did not like that, so I was

17 not returned after I had been successful in eight

18 elections in that same district. So I say this just to

19 give you a little of my background.

20 I would also add, don't give up. I didn't give

21 up. I got back. I was perhaps -- maybe they forgot

22 about me by the time I went back and ran for election

23 again, and I was elected to the Corporation Commission

24 and it was not limited to the people from my district,

25 that was a statewide race. So there is tomorrow.

Page 92

1 But to your comment on the dark day, it's

2 extremely dark when you get that message that you lost

3 the election. And I lost in a primary which was very

4 difficult and I was very depressed, I must tell you.

5 I -- I was a basket case for, about two weeks. And I

6 thought, what the hell, I'm bigger than this.

7 Don't give up. Look ahead. Thank you.

8 CHAIRPERSON BUSCHING: Thank you. Other -- any

9 other questions for Mr. Smith?

10 Commissioner Jolley?

11 COMMISSIONER JOLLEY: Yes. I just have a

12 question, so what would you consider fair when you say

13 the penalty was too high?

14 MR. SMITH: You know, I looked in the past at

15 some penalties you've given. I think you've fined a

16 settlement of \$5,000. I think that would be fair to me.

17 The \$2,500 doubled. I was -- and I think it would be

18 fair.

19 I don't know. I wish I could say that after --

20 after hearing Mr. Kunasek that I paid the price, I paid

21 the ultimate price. And you never know what it is when

22 you walk into a district and people say to you, "Oh,

23 you're the guy that's been impeached." I was not

24 impeached, but that's what people think of me.

25 But I think that the Commission must levy a

Page 93

1 fine in this. And whatever it is, I would hope that we

2 can resolve it.

3 I do know that we do have a motion still

4 pending. I want to end this. I don't want to go to the

5 U.S. Supreme Court. I want to get on with my life.

6 Right now I can't be a politician, I can't run for

7 office, I got to get my life back together and try to

8 salvage my reputation. Try to do something with this

9 tainted reputation and it hurts me.

10 CHAIRPERSON BUSCHING: Mr. Smith, are you

11 saying that if the Commission would recommend some sort

12 of financial settlement, that as a part of that

13 financial settlement, you agree to withdraw any appeals

14 that are pending?

15 MR. SMITH: I would. That would be part of a

16 stipulation, that we dismiss any legal matters. That it

17 would be terminated. And Ms. Varela can probably write

18 up the words better than I.

19 But in these agreements many times both parties

20 agree that they will not proceed with any appeals and

21 accept that as a full settlement and that's the

22 consideration.

23 CHAIRPERSON BUSCHING: And are you the

24 appellant on all the matters that are pending?

25 MR. SMITH: Yes. At the present time we've

Page 94

1 filed a Motion For Reconsideration. It was denied. We
 2 now filed a Notice of Appeal before the Court of
 3 Appeals.
 4 And Mr. Abney, my attorney, he couldn't be here
 5 today, but Ms. Varela knows he said that he couldn't say
 6 anything more than I would say. And he would -- he and
 7 I both agreed that we would stop this legal action. Let
 8 it end. Let it end.
 9 CHAIRPERSON BUSCHING: Okay. Mr. Lang, you
 10 were going to say something?
 11 MR. LANG: (No oral response.)
 12 CHAIRPERSON BUSCHING: Oh, okay. I'm sorry.
 13 COMMISSIONER SCARAMAZZO: I would like to
 14 comment on something here. With all due respect, Mr.
 15 Smith, you know, I am certainly willing, this reminds me
 16 here of the Richard Nixon thing, you know. To me the
 17 ultimate price Mr. Richard Nixon paid was being removed
 18 from the presidency, it was not jail time and any of the
 19 other things considered. And I think you suffered
 20 through this also.
 21 I just have a concern here that, you know, from
 22 a personal standpoint, if we are going to go looking at
 23 a way to reduce the fine, or do away with fines, or do
 24 nothing with the fines, I don't want that tied to your
 25 legal right to pursue whatever remedies you still feel

Page 95

1 necessary to do. You know, I don't want that to seem
 2 like there's some bribe involved that we reduce this at
 3 the cost of you doing "X" and "Y." You know, I wouldn't
 4 want it tied to that.
 5 I think you have every legal right to pursue
 6 whatever remedy. If you decide to give it up and not
 7 pursue, you know, anymore, you know, in the Supreme
 8 Court or whatever it is, that's your decision and I
 9 would feel reluctant to tie that to anything like that.
 10 That's just a personal opinion that I don't
 11 want to deny that -- deny any rights to be based on a
 12 monetary consideration by the Commission.
 13 MR. SMITH: But, I -- Commissioner -- Madame
 14 Chairman, Commissioner Scaramazzo, I will agree to that.
 15 It doesn't force my arms. I think that's a fair thing
 16 to do. It's fair on my part too. I think it's fair to
 17 the people of the state of Arizona that this matter end
 18 and fair to the Clean Elections Commission that these
 19 things are over. And it would be voluntary. If we
 20 reach this agreement, I would voluntarily do that and make
 21 that part of it. I want that to be a part of it.
 22 COMMISSIONER SCARAMAZZO: As long as that is
 23 your decision, not something tied to the Commission, you
 24 know. I don't --
 25 MR. SMITH: That would be my decision. That

Page 96

1 would be my decision. Thank you.
 2 CHAIRPERSON BUSCHING: Thank you.
 3 I have a question for Ms. Varela. Mr.
 4 Smith's case was not the first time that we ordered
 5 return of all Clean Elections funding.
 6 MS. VARELA: That's my recollection. Maybe
 7 before I started --
 8 COMMISSIONER PARKER: Downing.
 9 CHAIRPERSON BUSCHING: The Mr. Downing case?
 10 MS. VARELA: Mr. Downing, yes, that is correct.
 11 Yes, that is true.
 12 Mr. Downing, to be honest with you, with
 13 respect to Mr. Downing himself, I think that is still
 14 with the collections part of -- it is still with the
 15 Attorney General's office because he is not able to be
 16 located.
 17 With respect to the other two gentlemen that
 18 were -- that ran with Mr. Downing, you're right. We had
 19 -- the Commission had imposed, if I remember correctly,
 20 re-payment of the full amount. It went to hearing -- we
 21 were going to start a hearing, they wanted to -- they
 22 just wanted to end the matter, and the Commission
 23 settled for less than the full amount of the re-payment.
 24 I don't remember those numbers off the top of
 25 my head. I have them back in my office.

Page 97

1 CHAIRPERSON BUSCHING: I guess I'm in a
 2 situation where I feel like my duty, even though I'm
 3 incredibly sympathetic to Mr. Smith and to the harm that
 4 he's suffered, my duty is to the citizens of the state
 5 of Arizona and the integrity of the Clean Elections
 6 system. And I have to look at the broader picture and
 7 see what message we may send out by any vote that we may
 8 have.
 9 And until I have some more information about
 10 what we've done in other cases, how those have been
 11 resolved, and some more background information, I guess
 12 I would prefer not to act on this today and would prefer
 13 to have it tabled to another meeting.
 14 COMMISSIONER JOLLEY: Well, I have a question.
 15 Or are you still --
 16 CHAIRPERSON BUSCHING: No, I'm done. Thank
 17 you.
 18 COMMISSIONER JOLLEY: Okay. My question is,
 19 that we were asking for the total amount to be returned
 20 to Citizens Clean Elections; is that correct?
 21 MS. VARELA: Yes.
 22 COMMISSIONER JOLLEY: I believe so.
 23 Okay. But weren't there some legitimate
 24 expenses there? I mean, there were legitimate expenses
 25 tied to the campaign itself, so that those funds -- I

Page 98

1 mean, how can we ask to return all \$32,000 of it?

2 CHAIRPERSON BUSCHING: That's the penalty in
3 the statute.

4 COMMISSIONER JOLLEY: But I thought because
5 there were legitimate expenses involved with the
6 campaign, we should deduct that. That's a
7 question/comment.

8 So I think we need to go back and review all
9 the figures and that kind of thing and how we settled
10 with some of the other cases.

11 CHAIRPERSON BUSCHING: And to expound upon what
12 you're saying, perhaps because we don't have -- a couple
13 of the Commissioners were not privy to the things that
14 went on. It may be beneficial to have some more
15 background information from the staff on exactly what
16 occurred, how it occurred, and everything.

17 COMMISSIONER SCARAMAZZO: And with due respect,
18 I don't know, it seems pretty basic. When I look at the
19 big picture, which I eluded that there's no bigger
20 picture than this case in light of Arizona Clean
21 Elections and the court, and the courts consistently
22 sided with Clean Elections.

23 And I think I can look any citizen in the face
24 of this state and say, was money the issue or was the
25 bottom line issue to go ahead and verify the Clean

Page 99

1 Elections law?

2 And I think that's what came out of it and
3 that's what is the most important to me. You know, from
4 the standpoint of the monetary returns, I don't think
5 there's a whole lot. The gentleman was removed from
6 office. The courts upheld that. Here's the fine.

7 You know, do we want to continue the process
8 and try to figure out, should we have a settlement,
9 should we go ahead and, you know, stick to the original
10 settlement and mandate that and be done with it?

11 I think it's a fairly simplistic question at
12 this point in time. I don't think it's, you know, very
13 difficult to understand, you know. Has he served the
14 price for his challenges to the Clean Elections law?

15 I believe he has. And I believe the monetary
16 aspects to me are secondary to what was proven in court,
17 because that was -- as I watched this thing as a
18 Commissioner, I was curious as to whether the courts
19 were going to uphold that. And I said that in a
20 meeting, that the courts were going to determine the
21 validity of this law or not.

22 Whether I was surprised by it, whether I wasn't
23 surprised by it, the court spoke and the decision was
24 made. And the monetary thing to me is secondary to
25 that.

Page 100

1 CHAIRPERSON BUSCHING: Okay. Thank you.

2 COMMISSIONER KUNASEK: Well, I would share,
3 Madame Chairman, his position. I'm not in any way ready
4 to act on, yes, no, up, down, sideways, or anything. I
5 would just like more history of this situation before
6 I'm ready to act on this other than further
7 consideration.

8 CHAIRPERSON BUSCHING: Okay. Mr. Lang?

9 MR. LANG: I just -- I can put together
10 something for the Commissioners that will give you
11 background on the other enforcement, but I would like to
12 point out one thing in his favor and one thing against
13 him.

14 And the thing in his favor is this, the other
15 case where we asked for return of money, that was
16 rampant fraud. That was gross misuse of public money
17 for bars in Scottsdale. It was the worse -- it was the
18 worst sort of behavior and I would never recommend that
19 we settle that case. Other than, you know, we settled
20 it but as a significant fine simply to save the
21 litigation expenses and the like.

22 In this case, there were serious reporting
23 problems and he overspent, and those were serious
24 violations. And the penalty of removal from office was
25 called for under the law. But there is no allegation of

Page 101

1 anything unethical as far as I know. But there was an
2 allegation of serious spending violation.

3 He mentioned though that we settled other cases
4 for \$1,000 or \$5,000, but those were settlements, and I
5 always recommend a more lenient settlement. The reason
6 the penalty is higher here is because there was no
7 settlement.

8 So, I don't think that those other cases of low
9 numbers are necessarily instructive here because this is
10 a different situation.

11 CHAIRPERSON BUSCHING: Okay. I haven't asked,
12 is there anyone else from the public that wishes to
13 speak to this matter?

14 Sir?

15 MR. EHST: Commissioners, I'm Eric Ehst,
16 Executive Director of the Clean Elections Institute.
17 And I would just like to reiterate what some of the
18 Commissioners have already eluded to.

19 This case has been going on for a very long
20 time. There's an awful lot of history here. There was
21 a judgment that was entered into after much deliberation
22 and a very long amount of investigation.

23 And I would certainly ask the Commission not to
24 go and make a snap decision on the spur of the moment
25 now, without going back and reviewing all of the history

Page 102

1 to know why it was done in the first place.

2 I would also like to point out that this very
3 long exercise that has dragged through numerous court
4 cases has cost the state a significant amount of money
5 in legal fees and court costs to defend against all of
6 these actions. So, there's been no small cost to the
7 state involved with this as well.

8 I would just ask the Commission to make an
9 informed decision, whatever decision you come to, and
10 not make a -- a quick judgment based on emotions at the
11 moment.

12 Thank you.

13 CHAIRPERSON BUSCHING: Any questions of Mr.
14 Ehst?

15 If not --

16 COMMISSIONER KUNASEK: I assume, Mr. Ehst,
17 excuse me, you were involved with the Institute during
18 this time?

19 MR. EHST: I was -- I was not employed by the
20 Institute. I've only been there for about four months
21 now employed. I was an observer of some of the
22 proceedings and certainly my records have a significant
23 amount of history along with the Commissions' records of
24 this case.

25 COMMISSIONER KUNASEK: Thank you.

Page 104

1 MR. LANG: Thank you, Madame Chair. You have
2 in Agenda Item IX, a program describing the COGEL
3 conference in New Orleans coming up in December, and we
4 need to get that -- Paula will tell you that we need to
5 get that arranged and get that going if you'd like to
6 attend. Generally at least one Commissioner attends
7 every year and the deadline for the early fee is the end
8 of October. So we certainly have until the next meeting
9 for you to decide whether you want to attend.

10 I would like to attend as well. New Orleans is
11 a wonderful place to go to; although, I don't -- that's
12 not why I want to attend this time. I think it's going
13 to be -- hopefully it will be a wonderful place this
14 time. I don't know. I don't know what to expect given
15 all the damage. But I think it's impressive COGEL is
16 going there as sort of a statement of support here.

17 If any questions, Paula is here to answer any
18 details or I can answer any questions as well.

19 COMMISSIONER PARKER: Is there a number of
20 Commissioners who can go?

21 MS. VARELA: I think in the past there have
22 been times when all the Commissioners have gone. I went
23 to one.

24 CHAIRPERSON BUSCHING: Yeah, I think the only
25 time -- I think -- my understanding is that typically

Page 103

1 CHAIRPERSON BUSCHING: Thank you.

2 COMMISSIONER SCARAMAZZO: In deference to
3 Counsel or Commissioner Kunasek, I'll put my emotions
4 aside for a moment, okay? I'll put those on the table,
5 put those on the shelf, and I'll go ahead and move to
6 table this and give you time to go ahead and catch up.

7 CHAIRPERSON BUSCHING: Is there a second?

8 COMMISSIONER JOLLEY: I'll second that.

9 CHAIRPERSON BUSCHING: It's been moved by
10 Commissioner Scaramazzo and seconded by Commissioner
11 Jolley that we table this matter to receive more
12 information.

13 COMMISSIONER SCARAMAZZO: Will that be on the
14 next agenda?

15 MR. LANG: It will.

16 COMMISSIONER SCARAMAZZO: Thank you.

17 CHAIRPERSON BUSCHING: Any further discussion?

18 If not, the Chair will call for the
19 question, all in favor say, "aye."

20 (Chorus of ayes.)

21 CHAIRPERSON BUSCHING: Opposed, nay?

22 Chair votes aye. Motion carries.

23 Item IX, consideration, discussion, and
24 possible action on 28th Annual COGEL Conference.

25 Mr. Lang?

Page 105

1 when the Commissioner is in their last year, they have
2 not gone for the reason that -- the thinking is that it
3 wouldn't continue to benefit the Commission.

4 Although, at the same time, I think that
5 Commissioner can provide information and help at the
6 conference. So I -- but generally, we've encouraged all
7 Commissioners to go.

8 MR. LANG: And I should add for the new
9 Commissioners, this is the government ethics membership
10 organization. And so it's very useful, at least for me
11 and for other Commissioners have reported it's very
12 useful to go because you get the point of view from
13 other states.

14 A lot of it deal with ethics issues, lobbyist
15 stuff, a lot of ethics issue, but campaign finance
16 enforcement agencies from all the over the country will
17 be there. It's really nice to compare notes. It's a
18 nice nonpartisan atmosphere and I found it very
19 worthwhile.

20 CHAIRPERSON BUSCHING: I would second what Mr.
21 Lang has to say. And I would also say that one of the
22 most interesting things to me has been the fact that
23 even though we know that only Arizona and Main have the
24 public financing of campaigns, I first learned through
25 COGEL that there's a lot of other government entities

Page 106

1 that have public financing of campaigns, cities and
 2 other more generally smaller units.
 3 And it's interesting to hear how those entities
 4 fund their systems and other issues that they deal with.
 5 So, it's been very beneficial in that regard.
 6 COMMISSIONER KUNASEK: Todd, what did you say
 7 the deadline for decision-making on this is?
 8 MR. LANG: I'd ask you to let us know by the
 9 next Commission meeting, but the deadline is October
 10 31st.
 11 MS. ORTIZ: Todd, if the Commissioners can let
 12 me know about the 25th, so I can take advantage of the
 13 early registration and give us enough time to get it
 14 processed and paid.
 15 COMMISSIONER KUNASEK: Okay. October 25th.
 16 MS. ORTIZ: Correct.
 17 COMMISSIONER SCARAMAZZO: And assuming you get
 18 it in early so you can get a hotel.
 19 MR. LANG: That's a good point, actually
 20 because I don't know where you stayed. I stayed across
 21 the street and we both had to stay across the street
 22 because it was late. It turned out actually to be fine
 23 but that's not always the case.
 24 MS. ORTIZ: First come, first serve is the
 25 best. It may not be there.

Page 108

1 COMMISSIONER KUNASEK: So moved -- second.
 2 CHAIRPERSON BUSCHING: It's been moved by
 3 Commissioner Scaramazzo and seconded by Commissioner
 4 Kunasek that we adjourn. All in favor say, "aye."
 5 (Chorus of ayes.)
 6 CHAIRPERSON BUSCHING: Opposed, nay?
 7 Chair votes aye.
 8 Thank you everyone for attending.
 9 (Whereupon the proceeding concludes at 12:19
 10 p.m.)
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 107

1 COMMISSIONER KUNASEK: Was the one last year
 2 after the flood?
 3 CHAIRPERSON BUSCHING: No, it was in Boston.
 4 COMMISSIONER JOLLEY: They move it.
 5 MR. LANG: They move it around.
 6 COMMISSIONER JOLLEY: I think in 2008 it's
 7 coming to Phoenix.
 8 MS. ORTIZ: 2009.
 9 MR. LANG: 2009. I'll probably attend -- if
 10 I'm still here.
 11 CHAIRPERSON BUSCHING: Mr. Lang, do we need to
 12 take any action on this matter?
 13 MR. LANG: No.
 14 CHAIRPERSON BUSCHING: Okay. Anything else on
 15 that?
 16 If not, we'll move to Item X, call for public
 17 comment. This is time for consideration and discussion
 18 of comments and complaints from the public. Action
 19 taken as a result of public comment will be limited to
 20 directing staff to study the matter or rescheduling the
 21 matter for further consideration and decision at a later
 22 date or responding to criticism.
 23 Anyone from the public wish to speak?
 24 If not, Item XI, adjournment. All --
 25 COMMISSIONER SCARAMAZZO: Moved to adjourn.

Page 109

1 C E R T I F I C A T E
 2
 3 I, Angela Furniss Miller, Certified Reporter,
 4 do hereby certify that the foregoing pages numbered 1
 5 through 108, inclusive, constitute a full and accurate
 6 printed record of my stenographic notes taken at said
 7 time and place, all done to the best of my skill and
 8 ability.
 9 DATED, at Phoenix, this 12th day of October,
 10 2006.
 11
 12
 13

Angela Furniss Miller, RPR
 Certified Reporter (AZ50127)

14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25